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LAWS OF MONTANA

RELATING TO

INCORPORATION, POWERS, FEES AND ANNUAL REPORTS OF

CORPORATIONS

**OTHER THAN INSURANCE, BANKING, RAILROAD, MOTOR CAR-
RIERS, BUILDING AND LOAN ASSOCIATIONS, AND
MUNICIPAL OR PUBLIC CORPORATIONS, AND EX-
CEPTING LICENSE TAX, BLUE SKY LAWS AND
GENERAL PROPERTY TAX LAWS.**

COMPILED FROM THE

**REVISED CODES OF MONTANA, 1935
AND SESSION LAWS OF MONTANA, 1937**

WITH CONSTITUTIONAL PROVISIONS

COMPILED BY THE SECRETARY OF STATE—JUNE, 1937

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STATE OF MONTANA,

SS.

I, _____, Secretary of State of the State of Montana, do hereby certify that to the best of my knowledge and belief, this pamphlet contains a full, true and complete copy of the laws of the State of Montana, now in full force and effect, relating to corporations, other than insurance, banking, railroad, motor carriers, building and loan associations, and municipal or public corporations, and excepting license tax, blue sky and general property tax laws.

IN WITNESS WHEREOF, I have hereunto set my hand and caused
the Great Seal of the State of Montana to be affixed at Helena, the Capital,
this.....day of....., A. D., 19.....

Secretary of State,

Constitutional Provisions

ARTICLE XII

REVENUE AND TAXATION

Section 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

Sec. 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

Sec. 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

ARTIVCLE XV

CORPORATIONS OTHER THAN MUNICIPAL

Section 1. All existing charters, or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this constitution, shall thereafter have no validity.

Sec. 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the state; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; provided, that any such laws shall be subject to future repeal or alteration by the legislative assembly.

Sec. 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.

Sec. 4. The legislative assembly shall provide by law that in all elections for directors or trustees of incorporated companies, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there are directors or trustees to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of

stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or trustees shall not be elected in any other manner.

Sec. 9. The right of eminent domain shall never be abridged, nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the state shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

Sec. 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days notice given in pursuance of law.

Sec. 11. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.

Sec. 13. The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed.

Sec. 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct or maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise, any other competing line of telegraph or telephone.

Sec. 15. If any railroad, telegraph, telephone, express or other corporation or company organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express, or other corporation, organized under any of the laws of any other state or territory of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state, in all matters that may arise as if said consolidation had not taken place.

Sec. 16. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment

or otherwise, any contract or agreement whereby such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of negligence of such person, company or corporation, or the agents or employees thereof; and such contracts shall be absolutely null and void.

Sec. 17. The legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

Sec. 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

Sec. 19. Dues from private corporations shall be secured by such means as may be prescribed by law.

Sec. 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporation, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, or in case of foreign corporations, prohibiting them from carrying on business in the state.

Political Code

CHAPTER 1

13. Seal defined. When the seal of a court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto.

CHAPTER 2

25. Concurrent jurisdiction of state. Pursuant to article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as the said lands are held and occupied by the United States

for public purposes; reserving, however, to this state a concurrent jurisdiction for the execution upon said lands of all process, civil or criminal, lawfully issued by the courts of the state, and not incompatible with the cession hereby made; provided, that an accurate map or plat and description by metes and bounds of said land shall be filed in the office of the county clerk and recorder of the county in which the same are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city; and provided, further, that the state reserves the right to tax all property of any railroad or other corporation having a right of way or location over or upon the said land.

CHAPTER 15

124. Power and duties of the governor. In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

(6) * * * * * He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

CHAPTER 17

145. Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, twenty cents per folio.

2. For affixing certificate and seal, one dollar.

3. For issuing each certificate of incorporation and each certificate of increase of capital stock, three dollars.

4. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, one dollar per thousand dollars.

Additional from one hundred thousand dollars, to two hundred and fifty thousand dollars, eighty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, sixty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, forty cents per thousand dollars.

Additional over one million dollars, twenty cents per thousand dollars.

Providing, that no fee for filing any articles of incorporation or increase of capital stock shall be less than fifty dollars except those enumerated in the next subdivision, which do not have capital stock and are not organized for the purpose of profit.

5. For all services in connection with the issuance of certificate, filing and recording of each of the following, whether foreign or domestic, twenty

dollars; religious societies, churches, organizations for religious purposes, hospitals, lyceums, musical and scientific societies, libraries, benevolent and fraternal societies, social clubs, agricultural societies, stock growers' associations, grazing associations and other associations of like character, including local, independent and subordinate organizations, as well as state, supervisory, governing and grand organizations, and bodies of any such associations, societies or orders, or for the purpose of establishing public or private charities, or both. Provided, however, that the above enumerated organizations do not have capital stock and are not organized for the purpose of profit.

6. For issuing each certificate of decrease of capital stock, ten dollars.

7. For recording and filing each certificate of decrease of capital stock, five dollars.

8. For issuing each certificate of continuance of corporate existence, ten dollars.

9. For recording and filing each certificate of continuance of corporate existence, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, fifty cents per thousand dollars.

Additional from one hundred thousand dollars to two hundred and fifty thousand dollars, forty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, thirty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, twenty cents per thousand dollars.

Additional over one million dollars, ten cents per thousand dollars.

10. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, five dollars.

11. For filing each notice of appointment of agent, five dollars.

12. For filing each annual or semi-annual statement of any foreign corporation, five dollars.

13. For receiving and recording each official bond, five dollars.

14. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon and military commissions excepted), five dollars.

15. For searching the records and archives of the state, one dollar.

16. For filing each trade mark, five dollars; and for issuing each certificate of record, one dollar.

17. For recording miscellaneous papers, records, or other documents, for filing, one dollar; for recording, twenty cents per folio.

18. For filing any other paper not otherwise herein provided for, one dollar for filing and twenty cents per folio for recording. When a copy of any law, resolution or record or other document or paper on file in the office of the secretary of state is presented for comparison and certification, five cents per folio must be charged and collected for proof-reading the same. That no member of the legislative assembly, or state or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy

of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of state, must be paid to the state treasurer at the end of each quarter, as provided in the constitution.

145.1. Fee for filing articles of incorporation of foreign corporations.

That every foreign corporation required by law to file in the office of the secretary of state a certified copy of its charter or articles of incorporation shall pay to the secretary of state for the filing thereof as follows:

Upon the proportion of its capital stock then or thereafter to be represented by its property and business in Montana at the rate of one dollar (\$1.00) per thousand dollars (\$1,000.00) for the first one hundred thousand dollars (\$100,000.00); at the rate of eighty cents (80c) per thousand dollars (\$1,000.00) for any additional from one hundred thousand dollars (\$100,000.00) to two hundred fifty thousand dollars (\$250,000.00); at the rate of sixty cents (60c) per thousand dollars (\$1,000.00) for any additional from two hundred fifty thousand dollars (\$250,000.00) to five hundred thousand dollars (\$500,000.00); at the rate of forty cents (40c) per thousand dollars (\$1,000.00) for any additional from five hundred thousand dollars (\$500,000.00) to one million dollars (\$1,000,000.00); and at the rate of twenty cents (20c) per thousand dollars (\$1,000.00) for any additional over one million dollars (\$1,000,000.00), provided, however, that no fee for filing shall be less than fifty dollars (\$50.00).

145.2. Report of capital stock and assets. Every foreign corporation which is required by law to file in the office of the secretary of state a certified copy of its charter or articles of incorporation shall annually and between the first days of January and March of each year file in said office a report verified by the oath of its president, vice-president, or secretary, stating the proportion of its capital stock represented in the state of Montana by its property located and business transacted herein during the preceding year.

145.3. Determination of proportion of capital stock employed in state. In determining the proportion of capital stock employed in this state the same shall be computed by taking the gross business in dollars of the corporation in the state for the preceding year and adding the same to the full value in dollars of the property of the corporation located in the state and by taking the total gross business in dollars of the corporation, both within and without the state for the preceding year, and adding thereto the full value in dollars of the entire property of the corporation both within and without the state and by then dividing the total value in dollars of the business and property in the state by the total value in dollars of all the business and property of the corporation, the quotient thus obtained to be taken as the percentage of the capital stock represented by the business and property within the state. The secretary of state may demand as a condition to the filing of such report a statement verified by the president, vice-president or secretary of such foreign corporation, showing in detail the information required for the making of the calculation aforesaid, which statement when so demanded shall be attached to and filed with such report.

145.4. Additional filing fee required on showing of report, when. When-

ever such report shall show a greater proportion of the capital stock of such foreign corporation represented by its property and business in Montana than that upon which the fee for filing the charter or articles of incorporation was based, such foreign corporation at the time of filing such report, shall pay such additional fee as it would have been required to pay for filing if such fee had been calculated on the basis of the proportion of the capital stock represented by its business and property in Montana as shown by such report.

145.5. Figuring fee on corporation having stock of no par value. If a foreign corporation has capital stock of no par value, the value of its shares, for the purpose of determining the amount of fees to be paid hereunder, shall be determined upon the clear present market value of said shares; provided, however, that if the clear present market value of said shares is not readily ascertainable, then the shares shall be considered to be of the value as shown by the books of account of the corporation.

145.6. Forfeiture of right to do business for failure to pay fee or file statement. If any foreign corporation shall fail to file such annual report, or to pay such additional fee or shall file a false report, it shall forfeit its right to do business in this state.

145.7. Application of act. The provisions of this act shall not apply to corporations which entered Montana for the transaction of business prior to February 27, 1915.

147. Water users' association exempt from payment of fees. Any water users' association, organized in conformity with the requirements of the laws of the United States and of the state of Montana, under the reclamation act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax and from the payment of any annual franchise tax, and upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of ten dollars for the filing and recording of such articles of incorporation, and the issuance of certificate of incorporation.

CHAPTER 185

An Act Granting Continual Existence to Corporations and Water Users' Associations Organized for the Purpose of Acquiring and Owning Water Rights and Constructing, Maintaining and Operating Canals, Ditches, Flumes and Other Works for Conveying Water, and Reservoirs for Storing the same.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Corporations and water users' associations heretofore or hereafter organized under the laws of the state of Montana for the purpose of acquiring and owning water rights and constructing, maintaining and operating canals, ditches, flumes and other works for conveying water, and reservoirs for storing the same, or for any of the purposes mentioned in this section, shall have continual existence.

Sec. 2. Corporations and water users' associations heretofore organized

under the laws of the state of Montana for all or any of the purposes mentioned in section 1 of this act are hereby authorized to amend their articles of incorporation in the manner provided in sections 5917.1 to 5917.4 inclusive, of the Revised Codes of Montana of 1935, at any time after the taking effect of this act, so as to hereafter have and enjoy the privilege of continual existence.

Sec. 3. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 4. This act shall take effect and be in full force from and after its passage and approval.

Approved March 18, 1937.

CHAPTER 219

2409. Protest license fund. Whenever any license fee is demanded of any person for the use and benefit of the state of Montana, and the same is deemed unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be deemed unlawful, under protest to the state treasurer, who shall deposit the same in a special fund to be designated "Protest License Fund"; and thereupon the person paying, or his legal representatives, may bring an action in a court of competent jurisdiction against the state treasurer to recover the same, without interest; provided, that any action instituted to recover any license paid under protest shall be commenced within sixty days after the date of payment thereof to the state treasurer. If no action be commenced within such sixty days, or if any action be so commenced and shall be finally decided in favor of the state treasurer the amount of the license fee shall be by the state treasurer taken from such "protest license fund" and deposited to the credit of the fund to which the same belongs, but if such action be finally decided adversely to the state treasurer, he shall, upon receiving a copy of the final judgment in said action, refund such license fee to the person in whose favor such judgment is rendered.

CHAPTER 230

2430. License required for furnishing premiums or bonuses for sale of merchandise. Every person, firm, or corporation who shall use, and every person, firm, or corporation who shall furnish to any other person, firm, or corporation to use, as a gift or bonus, or otherwise, in, with, or for the sale of any goods, wares, or merchandise, any premium or bonus, including stamps, coupons, tickets, certificates, cards, or other similar devices which shall entitle the purchaser receiving the same with such sale of goods, wares, or merchandise to procure from any person, firm, or corporation, any premium or bonus, including goods, wares, or merchandise, free of charge or for less than the retail market price thereof upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other similar device; and every person, firm, or corporation placing premiums or bonuses of goods, wares, or merchandise, including such as crockery, chinaware,

aluminumware, tinware, graniteware, or anything else that may be included or contained or delivered with packages of any kind of merchandise of any description, shall, before so furnishing, selling, or using the same, obtain a separate license therefor from the county treasurer of each county wherein such furnishing or selling or using of such premiums or bonuses shall take place, for each and every store or place of business in that county from which such furnishing or selling of premiums or bonuses as herein enumerated, or in which such shall take place.

2452. Officers and corporations to furnish information when requested by board. In order to afford the better advantage for obtaining knowledge to be incorporated with that collected through special investigations and other sources, all officers of the state, the physician of all incorporated companies, and the president or agent of any company chartered, organized, or transacting business under the laws of this state, as far as it is practicable, shall furnish to the state board of health any information bearing upon public health which may be requested by said board, for the purpose of enabling it better to perform its duties of collecting and distributing useful information on this subject.

4542. Corporation may be organized as county farm bureaus. A corporation to be known as the county farm bureau may be organized in any county, to develop and to carry out a county program of work in co-operation with the board of county commissioners of said county, the Montana state college of agriculture and mechanic arts of the university of Montana, and the United States department of agriculture, for the advancement of agriculture and home economics, the promotion of better understanding between the citizenship of town and country and the development of a wholesome community life.

4543. How bureau shall be incorporated. Such corporation shall be incorporated in the manner and under the provisions of law applicable to the corporations specified and authorized to be organized under the provisions of sections 6453 to 6458 of these codes.

4544. Certificate fee only to be paid. No other fee than the usual certificate fee shall be required to be paid to any county or state officer for filing of such articles of incorporation.

Civil Code

CHAPTER 12

CREATION OF PRIVATE CORPORATIONS

5900. Corporation defined. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

5901. What are public and what private corporations. Corporations are either public or private. Public corporations are formed or organized

for the government of a portion of the state; all other corporations are private.

5902. Private corporations—how formed. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this chapter.

5903. Purposes for which private corporations may be formed. The purposes for which the private corporations mentioned in the last section may be formed are:

1. The support of public worship;
2. The support of any religious, benevolent, charitable, educational, or missionary undertaking;
3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music, or other fine art;
4. The encouragement of agriculture and horticulture and the processing and marketing of such products;
5. The maintenance of public parks, and of facilities for skating and other innocent sports;
6. The maintenance of a club for social enjoyment;
7. The maintenance of a public or private cemetery;
8. The prevention and punishment of theft or wilful injuries to property and insurance against such risks;
9. The insurance of human life, dealing in annuities, and the insurance of fidelity of persons holding places of public or private trust;
10. The insurance of human beings against sickness or personal injury;
11. The insurance of the lives of domestic animals or their loss or damage;
12. The insurance of property against marine risks;
13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation;
14. The transaction of any banking business or trust deposit and security business, and the insurance of the safe-keeping of all kinds of personal property;
15. The construction and maintenance of a railroad and of a telegraph line in connection therewith, and a street railroad of any kind;
16. The construction and maintenance of any other species of roads, and of bridges in connection therewith;
17. The construction and maintenance of a bridge;
18. The construction and maintenance of a telegraph line, telephone or electric light line;
19. The establishment and maintenance of a line of stages;
20. The establishment and maintenance of a ferry;
21. The carriage of property and persons by express;
22. The building and navigation of steamboats and carriage of persons and property thereon;
23. The supply of water to the public;
24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means;
25. The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical, or chemical business;

26. The transaction of a printing and publishing business;
27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate;
28. The establishment and maintenance of a hotel;
29. The improvement of the breed of domestic animals by importation, sale, or otherwise;
30. The transaction of the business of raising, processing, storing, buying, and selling of all agricultural, horticultural, and other farm products, including grains, fruits, all classes of farm animals and their products;
31. The construction of canals, ditches, flumes, and other works for conveying water, and reservoirs for storing the same, and the boring of artesian wells;
32. To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidence of indebtedness created by, any other corporation or corporations wherever organized, with all the rights, powers, and privileges of ownership thereof; provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this subdivision mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the state of Montana.

No corporation must be formed for any other purpose than those mentioned in this section.

5903.1. Formation of mortuary, undertaking, crematory, mausoleum and real estate companies authorized. That undertaking, mortuary, crematory, mausoleum and real estate companies may be incorporated under the general laws of this state governing corporations for profits, either for that purpose alone or in connection with other purposes.

5903.2. Validation of charters. That all associations or companies which have heretofore obtained charters under the general laws governing corporations for profit, authorizing the operation of undertaking, mortuary, crematory, mausoleum or real estate companies, either alone or in connection with other purposes, are hereby declared to be valid and legal corporations for the purposes specified in their charters, including the operation of undertaking, mortuaries, crematories or mausoleums; and also to include the right to purchase, acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of real property.

5904. Name of instrument creating corporation. The instrument by which a private corporation is formed is called "articles of incorporation."

5905. Articles of incorporation—what to contain. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state;
4. The term for which it is to exist, not exceeding forty (40) years;
5. The number of its directors or trustees, which shall not be less than three (3) nor more than thirteen (13), and the names and residences of

those who are appointed for the first three (3) months, and until their successors are elected and qualified;

6. The amount of its capital stock, and the number of shares into which it is divided, and if there be more than one (1) class of stock created by the articles of incorporation, a designation of each class, with the amount of stock of each class and the number of shares into which it is divided, and a designation of the voting powers or rights, if any, of any or all classes of stock, with any limitation or restriction thereof, and with either a designation and description of, or a delegation of power to the board of directors of the corporation to designate and describe, the different series, if any, of any class of such stock, the manner of issuing, preferences, limitations, restrictions, and other terms and conditions of or on which each class of said stock, or any series thereof, shall be issued. The articles of incorporation may also contain such provisions as may be desired, limiting or denying to the present or future stockholders of any or all classes of stock any pre-emptive or preferential right to subscribe to any or all additional issues of stock of the corporation of any or all classes, or bonds, debentures or other obligations convertible into stock, subject to the provisions of the constitution and laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings, the articles of incorporation may contain provisions fixing the proportion of each or any class of stock which shall be required to be represented or voted, for specified action, at any such meeting, election or vote, or consent proceeding. The articles of incorporation may also contain provisions for issuing bonds, debentures or other obligations, convertible into stock of any class, in amounts, upon the terms, in the manner and upon the conditions, which shall be provided by resolution of the board of directors. The articles of incorporation may also contain provision making, or delegating power to the board of directors of the corporation to make, the stock of any class or series thereof convertible into stock of any other class or classes or of any other series of the same or any other class or classes, upon such terms and conditions as may be expressed in the articles of incorporation or in a resolution of the board of directors of the corporation, if delegation of power so to do is set forth in the articles of incorporation.

7. If there is a capital stock, the amount actually subscribed, and by whom;

8. If the stock is assessable, it must be so stated.

5906. Certain corporations to state further facts in articles. The articles of incorporation in the following cases must also state:

1. In case of assessment life insurance corporations, the articles of incorporation shall state as provided in sections 6294 and 6295 of this code

2. And in articles of incorporation of institutions of learning, shall state as provided in section 6452 of this code.

3. And in case of building and loan associations, the corporation shall be formed as provided in section 6355.1 et seq., inclusive, of this code.

4. In case of religious, benevolent, and other like corporations, the articles of incorporation shall state as provided in section 6455 of this code.

5. Articles of incorporation of any railroad company shall also state the names of the counties, states, territories, and countries where the termini of said road are to be located, and those through which said road shall pass, and the general route of said road, also the amount of capital stock necessary to construct the same.

6. In the case of the formation of corporations for the construction of ditches and flumes, the articles of incorporation must also state the stream or streams from which the water is to be taken, the point or place on said stream at or near which the water is to be taken out, the line of the ditch or flume, and the use to which the water is to be applied.

7. In case of tunnel corporations, the articles of incorporation shall also state the place where said tunnel is to be run, the termini, its course, and the minerals or ore designed to be excavated.

8. In the case of telegraph or telephone companies, the articles of incorporation shall also state the termini of such line or lines, and the counties through which they shall pass.

5907. How executed—subscription and acknowledgment. The articles of incorporation must be subscribed by three or more persons, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

5908. Manner of forming corporations. At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business; of digging ditches, of building flumes or running tunnels; of purchasing, holding, developing, improving, using, leasing, selling, conveying, or otherwise disposing of water powers and the sites thereof, and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same; of purchasing, holding, laying out, platting, developing, leasing, selling, dealing in, conveying, or otherwise using or disposing of townsites or towns, or the lots, blocks, or subdivisions thereof, or lots, blocks, or subdivisions in any town, village, or city; or of carrying on any other branch of business designed to aid in the industrial or productive interests of the country, and the development therefor of one or more of the aforesaid branches of business, or for any of the purposes for which private corporations may be formed, as set forth in section 5903 of this code, must prepare, sign, acknowledge, and file articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of state, whereupon the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon the persons signing the articles and their associates and successors shall be a body politic and corporate by the name stated in the certificate, and for a term of forty years, unless in the articles of incorporation otherwise stated, or in this code otherwise specially provided, but in no case, where not otherwise specially provided in this code, must such term exceed forty years; provided, however, that no articles of incorporation shall be accepted and filed by the secretary of state which

designate a name for the proposed corporation which is the same as that of any existing domestic corporation, or which, in the judgment of the secretary of state, is so similar to the name of any existing domestic corporation as to mislead or confuse persons dealing with such corporations; and provided further, that nothing herein shall affect the present term of existence of any corporation heretofore incorporated under this section for a period of forty years.

5909. Filing of articles of incorporation in county where corporation holds real estate. Any corporation which purchases or holds real estate in any county in this state shall file a duly authenticated copy of its charter or articles of incorporation, or a copy of the copy of its articles of incorporation filed in the office of the secretary of state of Montana, duly certified by such secretary of state, in the office of the county clerk of each such county, within ninety days after real estate is purchased or otherwise acquired therein, provided such articles have not already been filed. The copies so filed with the several county clerks and certified copies thereof, shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to real estate, or the rents, issues, or profits thereof, located in any county where such corporation has failed to file a copy of its articles of incorporation until a duly authenticated copy of its articles of incorporation shall have been filed in such county; provided, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to comply with the provisions of this section, within the time mentioned herein; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction by any party or parties suffering the same. This section shall apply equally to domestic corporations and to foreign corporations licensed to do business in this state and the penalties for non-compliance shall in either case be those herein provided for and none others.

5910. Validation of articles of incorporation. Whenever heretofore any corporation, whether formed under the laws of the territory or state of Montana, or the laws of any other state or territory, has filed in the office of the secretary of the territory or state of Montana, or of the county clerk of any county in said territory or state, or of both, any copy of its articles of incorporation, or charter, or of any statute or statutes creating such corporation or defining its powers, in conformity to the requirements of the laws of Montana then in force, which copy was a true and correct copy of its said articles, or of its said charter, or of said statutes, but such copy or copies were not properly, or at all, certified as true and correct by the legal custodian of the original or originals thereof, such uncertified or defectively certified but true and correct copy or copies are hereby accepted, on behalf of the state of Montana, as a substantial and satisfactory compliance with the requirements of the laws of Montana then in force, and such filings are hereby declared valid and lawful in all respects and for all purposes to the same extent and with the same legal effect as if such true copy or copies had been fully and duly certified, prior to being

filed, by the legal custodian of the original or originals thereof; provided, that, before any such corporation shall have the benefits of this act, and before such defective filings shall be cured, as hereby provided, and become operative as lawful filings from the date of the original filing thereof, such corporation shall, within six months from the date of the final passage of this act, file in the office of the secretary of state of the state of Montana, and in such other public office or offices as are now designated by law as the place or places where such documents would now be filed if any such corporation were now for the first time making such filings, a true and correct copy of its said articles, charter, or statute or statutes, and all amendments thereof, duly certified as true and correct and complete copies thereof, duly certified as such by the present lawful and official custodian of the originals thereof.

5911. Effect of validation. Whenever any such corporation as is referred to in the preceding section shall have complied with the provisions of said section and made the filings thereby required, said corporation shall be deemed, and is hereby declared, to have fully complied with all of the requirements of the laws of the territory or state of Montana, and of the constitution and laws of the state of Montana, concerning such filings, and is hereby vested with all the rights, privileges, and immunities, which would have been enjoyed by it if it had in all respects complied strictly at the time of its first filings with all of the requirements of the law then in force and applicable thereto; all such rights, privileges, and immunities being hereby conferred as of the date of the first filings of such true but uncertified copies.

5912. Release from payment of charges and fees—filing fees. Upon complying with the provisions of the two preceding sections, any such corporation shall be and hereby is released from the payment of any fees, or other charges, to the secretary of the state of Montana or to any county clerk of any county in Montana, which may or might have become due under or by reason of the provisions of any other laws of this state; provided, that, before the acceptance and filing of said new certified copies by the secretary of state, a filing fee of five dollars shall be paid to him by or on behalf of said corporation, and that any county clerk in whose office any such new filings shall be made under the provisions of this act shall likewise require to be paid to him, by or on behalf of said corporation, a filing fee of one dollar,

5913. Certified copy of articles prima facie evidence. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all courts and other places as prima facie evidence of the facts therein stated.

5914. Evidence of corporate existence or capacity. The certificate issued by the secretary of state upon the filing of a certified copy of any articles of incorporation, or a certificate issued by such secretary or state auditor, setting forth that any corporation, domestic or foreign, has filed its articles of incorporation in his office as required by law, shall be admitted in evidence in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such corporation and of its

right to transact business in this state, excepting in an action prosecuted by the state in the nature of a quo warranto proceeding.

5915. Evidence of corporate character of national banks. The certificate of the comptroller of the currency of the United States issued to any national bank, authorizing it to commence business, or a certificate of such comptroller setting forth that such bank is authorized to transact business, shall be admitted in evidence in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such bank; provided, however, that this act shall not be so construed as to affect any case now pending in the courts of this state or of the United States.

5916. Extension of term of corporate existence. When the term of years for which any corporation organized under the laws of the territory or state of Montana was incorporated, or its extended term of corporate existence, has expired, or is about to expire, and such corporation has not been administered upon as an expired corporation or gone into liquidation or had any settlement of its affairs, it may elect to have its term of incorporation extended and continued the same as if originally incorporated. Such election may be made at any annual meeting of the stockholders or members of such corporation or at any meeting called by the directors thereof expressly for considering the subject, if voted by stockholders representing a majority of the capital stock or by a majority of the members at such meeting of the stockholders or members of such corporation, or may be made by the directors thereof upon the written consent of that number of such stockholders or members; provided, however, that as to all such corporations whose charters, or whose terms of extended corporate existence, have heretofore expired, or whose charters, or terms of extended corporate existence, may expire before such election is made, such meeting shall be held and such election made within five years after the expiration of the charter, or extended term of corporate existence, which is to be renewed; and provided further that all acts of such corporations whose charters, or extended terms of existence, have expired, or whose charters, or extended terms of corporate existence, may hereafter expire before such election is made, and of the officers of such corporations, which they and their officers were legally authorized to do prior to the expiration of their charters, or extended terms of corporate existence, are hereby authorized and declared legal and valid and of full force and effect, the same as though done and made prior to the expiration of the terms for which they were incorporated, or for which their corporate existence was extended.

A certificate of the action of the directors, signed by them and their secretary when the election is made by their unanimous vote upon the written consent of the stockholders or members, or a certificate of the proceedings of the stockholders or members when such election is made at any such stockholders' meeting, signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of state, and if the principal place of business of such corporation has been changed, a certified copy thereof must be filed in the office of the clerk of the county to which such principal place of business has been

changed; and thereafter such corporation shall continue its existence under the provisions of this code which are applicable thereto for a term not exceeding forty years from and after the date of expiration of its term of existence, and it shall possess all the rights and powers and be subject to all the obligations, restrictions and limitations prescribed thereby.

5916.1. Fees. Any corporation desiring to comply with the provisions of this act, shall pay the same fees to the secretary of state in so doing, as are now required by law of corporations seeking to extend the term of their corporate existence.

5917. Existing corporations not affected. No corporation formed or existing before twelve o'clock noon on the first day of July, A. D. 1895, when this code takes effect, is or shall be in any manner affected by any of the provisions of part IV of division first of the Revised Codes of 1907, except those provisions which specifically mention and are made applicable to corporations formed and existing before said time, or unless such corporations elect to continue their existence under the provisions of this code applicable thereto as provided in the preceding section of this code; but all the laws of the state of Montana in force and applicable to said previously formed and existing corporations at twelve o'clock noon on the said first day of July, A. D. 1895, when this code takes effect, shall continue to apply and govern such previously formed and existing corporations in all respects, as well in relation to their formation and existence as to their operation, management, and all other matters and things contained in said laws and relating and applicable to such corporations, and said laws are repealed subject to the provisions of this section.

5917.1. Extension of corporate existence—corporations contemplated by act. Any corporation heretofore or hereafter organized under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, may, in the manner herein provided, extend its term of existence within the limits provided by law.

5917.2. Procedure for extending corporate existence. Unless otherwise directed by a resolution passed by a majority vote of the outstanding capital stock entitled to vote at any regular annual meeting or at any special meeting of the stockholders called for that purpose, the board of directors or trustees of any such corporation may, at any time within one year before the date of the expiration of its existence, by the adoption of a resolution by at least two-thirds of the members of such board at any meeting, whether regular or special, noticed and held at the time and place and in the manner prescribed by the by-laws of such corporation, provide that the term of existence of such corporation be extended for a specified period, within the limits provided by law. A certificate of the proceedings had at such meeting, showing in all cases a compliance with the provisions of this act, containing a copy of the resolutions adopted and showing the vote thereon shall be made out, signed by the chairman and secretary of the meeting and at least two-thirds of the members of the board of directors or trustees. The seal of the corporation shall be affixed thereto and attested by the proper officer of said corporation. Such certificate shall be filed in the office of the county clerk of the county wherein the original

articles of incorporation were filed and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state. Upon the filing of such certificate and certified copy thereof, as hereinabove provided, the term of existence of such corporation shall thereupon be extended for the term and period expressed in said resolution and certificate. If such corporation has changed its principal office and place of business to another county in this state a similar certified copy shall likewise be filed in the office of the county clerk of such county.

5917.3. Fees. Such corporation shall pay to the secretary of state and to the respective county clerks of the counties in which certificates are filed the fees required by the laws of the state of Montana.

5917.4. Additional to other methods of extending corporate existence. The method of extension of the term of corporate existence herein provided shall be in addition to any other method or methods provided by law.

CHAPTER 13

CHANGES IN CORPORATE ORGANIZATION AND MANAGEMENT

5918. Amendment articles of incorporation—purposes. Any corporation organized under any of the laws of the state of Montana heretofore or hereafter, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, may, in the manner herein provided, amend its articles of incorporation by changing the name, place of business or number of directors, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, by extending its term of existence within the limits provided by law, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto.

5919. Adoption of resolution. Such amendment shall be made by the adoption of a resolution at any regular or special meeting of the corporation, of which notice shall have been given in the manner hereinafter provided.

5920. Publication and mailing notice—waiver. Written or printed notice of such meeting must be deposited in the post office addressed to each stockholder of record of said corporation entitled to vote at such meeting under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, at his usual or last known place of residence, at least thirty (30) days previous to the date set for the holding of such meeting; in addition said notice must be published once a week for four (4) successive weeks in a daily or weekly newspaper published in the county wherein the principal place of business of such corporation is situated. If no newspaper is published in said county, it shall not be neces-

sary to publish said notice. In case the holders of two-thirds ($\frac{2}{3}$) of the stock of such corporation outstanding and entitled to vote as aforesaid, including such proportion of each or any class of stock as may be required by the original or amended articles of incorporation, or two-thirds ($\frac{2}{3}$) of the members, in case such corporation has no capital stock, shall file in the office of such corporation their written consent to the proposed amendment, publication of such notice shall not be necessary.

5921. Contents of notice. Said notice shall state the time and place of said meeting, shall distinctly specify the purpose thereof, and shall specifically state the proposed change of name, if any; the place from which and to which it is proposed to change its principal place of business, if any; the proposed increase or decrease in the number of its trustees or directors, if any, provided, however, that the number thereof shall at no time be less than three nor more than thirteen; the proposed change in the number, par value, character, class or preference of the shares of capital stock, if any; the extent of the proposed increase or decrease of the amount of capital stock, if any; the proposed change or extension of the business of such corporation, if any; the length of the proposed extension of the term of existence of such corporation, if any; and a specific statement of the nature of any other proposed amendment.

5922. Organization of meeting—voting. If at the time and place of said meeting, as specified in said notice, stockholders of said corporation shall appear in person or by proxy in number representing not less than two-thirds ($\frac{2}{3}$) of the capital stock of the corporation outstanding and entitled to vote under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or two-thirds ($\frac{2}{3}$) of the members, in case such corporation has no capital stock, the meeting shall organize by choosing a chairman and secretary and the meeting shall then proceed to vote upon the matter or matters proposed in said notice.

5923. Certificate of proceedings—preparation and filing. If, on canvassing the votes, it shall appear that at least two-thirds ($\frac{2}{3}$) of the capital stock of such corporation outstanding and entitled to vote under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, including such proportion of each or any class of stock, as may be required by the original or amended articles of incorporation, or two-thirds ($\frac{2}{3}$) of the members, in case such corporation has no capital stock, have voted in favor of the proposition submitted, a certificate of the proceedings showing in all cases a compliance with the provisions of this act, containing a copy of the resolution adopted and showing the vote thereon, and the number of shares of stock of each class voted thereon, shall be made out, signed and verified by the affidavit of the chairman of such meeting, and countersigned by the secretary of the meeting, and shall be filed in the office of the county clerk of the county where the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk shall be filed in the office of the secretary of state. A copy of such certificate shall likewise be filed in the office

of the county clerk and recorder of any county to which said corporation may have changed its place of business.

5924. Amendment, when effective—evidence—pending suits not affected. Upon the filing of such certificate in the office of the secretary of state in the manner provided in the preceding section, the designated amendment shall immediately become effective. A copy of such certificate, duly certified by the secretary of state, shall be prima facie evidence of the facts therein stated, and shall be received as such evidence in all courts of the state. No amendment shall affect any cause of action in favor of or against such corporation nor any pending suit in which such corporation shall be a party, nor shall the rights of any person be in any way prejudiced thereby, nor shall suits brought against such corporation by its former name be abated for that cause.

5925. Issuance of stock certificates. Whenever by reason of any change in the number or par value of the shares of stock any stockholder shall be entitled to a new or different stock certificate, it shall be the duty of the corporation to promptly issue such certificate upon the surrender of the original stock certificate held by such stockholder.

5926. Limitation on extension of term of corporate existence. Any corporation organized under the laws of the territory or state of Montana, whether organized previous to or after the taking effect of the Codes on July 1, 1895, shall have power to extend the term of its existence, in the manner provided by law, for consecutive periods of not to exceed forty years each; provided, that at the time of any such extension the unexpired portion of its then authorized term of existence plus the term of the proposed extensions shall not exceed forty years and sixty days; and provided further that nothing herein shall limit the existence of any corporation that may be by law permitted continual existence; and, provided further, that the state reserves the right to at any time alter, revoke or amend the powers and privileges herein granted to corporations.

5926.1. Amendment of articles of incorporation to allow continual succession authorized. Any corporation organized under the laws of the territory or state of Montana, which was on the 5th day of March, 1903, subject to the provisions of sections 860, 861, 862, 863 and 865 of the Civil Code of Montana of 1895, is hereby authorized to amend its articles of incorporation so as to hereafter have and enjoy the privilege of continual succession conferred upon corporations thereafter organized under the provisions of the act approved March 5, 1903, (Laws of Montana 1903, Chapter LXX, entitled: "An Act to Amend Sections 860, 861, 862, 863 and 865 of the Civil Code, Relating to Religious, Social and Benevolent Corporations"—sections 6453 to 6458 of this Code), or under laws amendatory thereof or supplemental thereto, by resolution to that effect, adopted (a) at any regular annual meeting of the members of the corporation, or (b) at any special meeting of the members regularly called for the purpose by the directors or governing committee, or (c) at any meeting of the directors or governing committee upon the written consent of the majority of the members of the corporation; provided, that such resolution is adopted prior to the expiration of the period of forty years from and after the date of the filing of the original articles of incorporation. The resolution of amendment may

be adopted at a meeting of the members upon the affirmative vote of a majority of the members then present, provided that a quorum of the members, as defined by the constitution or by-laws of the corporation, are present.

5926.2. Certificate of action concerning amendment—where filed. A certificate of the action of the directors or governing committee, signed by them and their secretary, when the resolution is adopted upon the written consent of the members, or a certificate of the proceedings of the meeting of the members, when the resolution is adopted at such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, shall be filed in the office of the clerk of the county wherein the original articles of incorporation are filed, and a certified copy thereof in the office of the secretary of state; and thereafter the corporation shall have continual succession, under the provisions of the Act of March 5, 1903, (Laws of Montana 1903, Chapter LXX), and laws amendatory thereof or supplemental thereto, which may be applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

5927. Limit decrease capital stock. No corporation shall diminish its capital stock to an amount less than its total indebtedness.

5928. Certain existing laws not affected. Nothing herein contained shall be deemed to affect the provisions of section 9964 of this Code, relating to the change of name of certain corporations by action of the district court, but the procedure specified in said section shall be cumulative and additional to that herein provided as to all corporations designated in said section 9964. Nothing herein contained shall be construed to change or amend the existing laws requiring approval of amendments to articles of incorporation of insurance or other corporations, by the state auditor or commissioner of insurance, nor shall this act apply to banks, trust, or investment companies in any case where procedure other than or different from that herein contained is prescribed by the bank act of this state governing such companies.

CHAPTER 32

Laws of 1937

An Act Authorizing the Amendment of Articles of Incorporation of Any Corporation Organized Under Any of the Laws of the State of Montana, Designating the Particulars in Which Such Articles of Incorporation May Be Amended; Providing the Procedure Therefor and for the Filing of Certificates of Such Proceedings With the Proper Officers.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any corporation, heretofore or hereafter organized under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the codes on July 1, 1895, may, in the manner herein provided, amend its original or amended articles of incorporation by changing the name, principal office or principal place of business or number

of directors, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, by extending its term of existence within the limits provided by law, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto.

Sec. 2. Such amendment may be made by the adoption of a resolution by a two-thirds vote of the capital stock of such corporation, represented in person or by proxy at any regular annual meeting of such corporation and entitled to vote thereat, held at the time and place prescribed by its by-laws for the election of directors without special notice thereof, at which meeting a quorum as defined by Section 5946, Revised Codes of Montana of 1935, or prescribed by the by-laws of such corporation, as in said section provided, is present; or at any special meeting of the stockholders of such corporation called, noticed and held for that specific purpose in the manner prescribed by its by-laws, at which meeting a quorum, as defined by said Section 5946, Revised Codes of Montana of 1935, is present; provided, however, that the stock of any corporation shall not be increased hereunder without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty (30) days notice given in pursuance of Sections 5920 and 5921, Revised Codes of Montana of 1935.

Sec. 3. A certificate of the proceedings had at such meeting, showing compliance with the provisions of this act, containing a copy of the resolution, or resolutions, adopted, and showing the vote thereon, shall be made out, signed and verified by the affidavit of the chairman of such meeting and countersigned by the secretary of the meeting, and shall be filed in the office of the county clerk of the county wherein the original articles of incorporation were filed, and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state. A similar certified copy of such certificate shall likewise be filed in the office of the county clerk of any county to which said corporation may have changed its principal office or principal place of business. Upon the filing of the certified copy of such certificate in the office of the secretary of state, as hereinabove provided, the said amendment, or amendments, shall immediately become effective.

Sec. 4. Such corporation shall pay to the secretary of state and to the respective county clerks of the counties in which certificates are filed the fees required by the laws of the state of Montana.

Sec. 5. The method of amending the articles of incorporation herein provided shall be in addition to any other method or methods provided by law.

Sec. 6. This act shall be in full force and effect from and after its passage and approval.

Approved February 18, 1937.

CHAPTER 14

BY-LAWS

5930. By-laws, adoption of—when, how, and by whom. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government, not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

5931. By-laws—may provide for what. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The time of the annual election of directors, and the mode and manner of giving notice thereof;
5. The compensation and duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

5932. By-laws, recording and amendment of. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during the office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked, by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall

not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written consent was filed, shall be stated in said book, and until so stated the repeal shall not take effect.

CHAPTER 15

DIRECTORS

5933. Corporate powers and business exercised by board of directors—number and membership of board—quorum. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen directors, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

5934. Classification of directors as to term of office. Any private corporation, now organized and existing, or which may hereafter be organized under the laws of Montana, may, by making provision therefor in its by-laws as originally adopted, or as amended, classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; provided, that no class shall be elected for a shorter period than one year, or for a longer period than three years, and that the term of office of at least one class shall expire each year. If the provision for such classification of directors is not made in the by-laws originally adopted, it may be incorporated in such by-laws by amendment, as other amendments to the by-laws may be legally made.

5935. Directors, election of. The directors must be, except as hereinafter provided, elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as provided in section 5930, but by so providing in its by-laws as originally adopted, or as the same may be amended, any corporation organized under this act, or heretofore organized under the laws of Montana, may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; provided, that no class shall be elected for a shorter period than one year, or for a longer period than three years, and that the term of office of at least one class shall expire each year.

5936. Directors must be elected or provided for at meeting at which by-laws are adopted. At the meeting at which the by-laws are adopted, or

at such subsequent meeting as may be then designated, directors must be elected, and unless otherwise provided by the by-laws as originally adopted, or as amended, shall hold their offices for one year, and until their successors are elected and qualified.

5937. Election of directors—how conducted. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section 5946 of this code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case the directors receiving the highest number of votes shall be declared elected.

5938. Organization of board of directors, etc. Immediately after their election the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

5939. Dividends to be made from surplus profits only. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large in the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

5940. Removal of directors. No director shall be removed from office unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and

object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 5930 of this code, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

5941. Resignation of directors or officers of corporations. Any director, trustee, or other officer of a corporation may resign his office by delivering to the secretary or president of the corporation, or depositing in the post office, in an envelope securely sealed, with the necessary amount of postage prepaid thereon, and addressed to the corporation, at its principal place of business, his written resignation, and filing in the office of the clerk and recorder of the county where the principal office or place of business of the said corporation is situated, a duplicate of the said resignation, together with an affidavit of the delivery or mailing of said resignation, as above specified, or an acknowledgment of service thereof, and by publishing in two consecutive issues of the official paper of the county where said company may be doing business a notice of said resignation, and the director, trustee, or other officer shall, upon such filing and publication, no longer be responsible for any act or default of the corporation, or of the other officers thereof, occurring after the date of said filing; provided, however, that any director, trustee, or other officer shall also comply with the by-laws of the corporation relating to resignations of directors or officers. This act shall apply to resident directors of foreign corporations having a place of business in this state, as well as to directors and other officers of domestic corporations.

5942. False certificate, report, or notice—officers liable. Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby, and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

5942.1. Insurance on directors' lives. (a) Whenever a corporation, organized under the laws of this state, has heretofore caused or shall hereafter cause to be insured the life of any director, officer, agent or employee, or whenever such corporation is named as a beneficiary in or assignee of any policy of life insurance, due authority to effect, assign, release, relinquish, convert, surrender, change the beneficiary, or to take any other or different action with reference to such insurance, shall be sufficiently evidenced to the insurance company by a written statement to that effect, signed by the president and the secretary or other corresponding officers of such corporation, under its corporate seal. Such statement shall be binding upon such corporation and shall protect the insurance company concerned in any act done or suffered by it upon the faith thereof without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings.

(b) No person shall be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of such corporation on any corporate act touching such insurance.

CHAPTER 16

MEETINGS OF STOCKHOLDERS AND DIRECTORS—ELECTIONS

5943. Meetings of stockholders and board of directors—where held. The meetings of the stockholders of a corporation must be held at its office or principal place of business in the state of Montana, except as hereinafter provided. The meetings of the board of directors or trustees of all corporations heretofore or hereafter organized under any of the laws of the state of Montana may be held either within or without the state of Montana, at such place or places as may be designated by the by-laws of such corporations. In case the meetings of the board of directors or trustees of a corporation shall be held outside of the state of Montana, either the original or full and complete copies or duplicate of all proceedings had at such meeting or meetings, certified by the president and secretary under seal, shall be sent to and kept at the principal office or place of business of the corporation in Montana, and shall be part of the records in Montana. The meetings of the stockholders of all corporations organized in conformity with the requirements of the laws of the United States and of the state of Montana, for the purpose of furnishing water only to its stockholders, called for the purpose of electing directors, may be held in the several director districts of such corporation, at such place in each director district as may be designated by the board of directors, and no shareholder shall be permitted to vote at any such shareholders' meeting, except the meeting held in the director district as may be fixed by the by-laws of said corporation.

5944. Special meeting—how called. When no provision is made in the by-laws for regular meetings of the directors and for the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there is none, on the order of two directors.

5945. Justice of the peace may order meeting, when. Whenever, from any cause, there is no person authorized to call or to preside at the meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

5946. Majority of voting stock must be represented. Except as hereinafter provided, at all meetings, elections or votes of any corporation heretofore or hereafter organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, had for any purpose, there must be a majority of the

outstanding capital stock of the corporation, entitled under the articles of incorporation, and the amendments thereto and the laws and constitution of Montana to vote at such meeting, election or vote, or a majority of the members, represented either in person or by proxy, in writing; provided that any corporation heretofore organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, or that may hereafter be formed under this chapter, may by its by-laws prescribe the proportion of its outstanding capital stock entitled to vote, as hereinbefore provided, or of its members, represented in person or by proxy, which shall constitute a quorum at any regular annual meeting of such corporation, held at the time and place prescribed in its by-laws, for the election of directors, and for all votes upon matters properly coming before such annual meeting without special notice thereof. Each share of stock entitled under the articles of incorporation, or amendments thereto and the laws and constitution of Montana, to be voted, may, at every meeting of the stockholders, be voted by the holder of record thereof on the books of the corporation, or proxy, and except where the transfer books of the corporation shall have been closed, or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as hereinafter provided, no share of stock shall be voted on at any election of directors which shall have been transferred on the books of the corporation within ten (10) days next preceding such election of directors. The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding forty (40) days preceding the date of any meeting of stockholders or election or vote; provided, however, that in lieu of closing the stock transfer books as aforesaid, the by-laws may fix or authorize the board of directors to fix in advance a date, not exceeding forty (40) days preceding the date of any meeting of stockholders, election or vote, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting, election or vote, and in such case such stockholders, and only such stockholders, as shall be stockholders of record on the date so fixed of stock entitled to vote as aforesaid, shall be entitled to such notice of and to vote at such meeting, election or vote, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of any stockholders entitled to be represented and vote, or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time. If for any reason there is not present a quorum as hereinbefore provided, of the outstanding stock entitled to vote, or members, or no election had, the stockholders or members present or represented may adjourn, and such adjournment and the reasons therefor shall be recorded in the journal of the proceedings of the meetings of stockholders.

5947. Stock of minors, etc.—how represented. The shares of stock of an estate of a minor, or person of unsound mind, may be represented by his guardian, and of a deceased person by his executor or administrator.

5948. Election may be postponed. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section 5940 of this code.

5949. Complaint as to elections. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the district court of the district in which such election was held, or a judge thereof, must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby.

5950. Meeting by consent valid. When all the stockholders, entitled under the articles of incorporation, and the amendments thereto and the laws and constitution of Montana, to vote at such meeting, or members, of any corporation organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the acts and proceedings of such meeting are as valid as if had at a meeting legally called and noticed.

5951. Proceedings at meeting to be binding. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

CHAPTER 17

CORPORATE STOCK AND THE RIGHTS OF STOCKHOLDERS

5952. Who are members and who are stockholders of corporations. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

5953. Certificates of stock—how and when issued. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

5954. Transfer of shares—when title passes. The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the

creditors of the transferor and subsequent purchasers, but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been transferred.

5955. Transfer of shares by married woman—payment of dividends—married woman's proxy. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a femme sole. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman, touching any shares of stock of any corporation owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

5956. Affidavit or bond may be required before transfer in case of non-resident stockholders. When the shares of stock in a corporation are owned by persons residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the officers of the corporation; or, if not so satisfactory, then one approved by the judge of the district court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer, and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

5957. Five per cent. of stock may demand statement. Whenever any person or persons owning five per cent. of the capital stock of any corporation shall present a written request to the treasurer thereof that they desire a statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall

neglect or refuse to comply with any provisions of this chapter, he shall forfeit and pay to the person presenting said request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

5958. Loan to stockholders. No loan of money shall be made by any corporation to any stockholder therein, and if such loan be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned.

5959. Stock certificate may be issued to bearer. Any corporation now existing or hereafter created or organized under or by virtue of the laws of the state of Montana, and having a capital stock non-assessable and fully paid within the meaning of the laws of this state, and whose object or purpose, in whole or in part, is to carry on the business of mining within this state, shall have the power to and may, by a vote of its stockholders, holding at least three-fourths of its capital stock, authorize or provide for the transfer and issue of certificates of stock which shall entitle the holder or bearer to the ownership of the same upon delivery and without transfer by indorsement or on the books of such corporation, subject, however, to the by-laws of the corporation and the provisions of this act, but no such transfer or issue shall be made except upon surrender and cancellation of the certificate or certificates so to be transferred, and all bearer certificates so issued shall be delivered to and receipted for on the books of the company by the stockholder or his authorized agent at whose request such transfers shall be made, and thereafter, so far as the corporation is concerned, the bearer of any such bearer certificate shall for all purposes, except that of holding office, be deemed a stockholder of the company, owning and holding the number of shares of its capital stock represented by such bearer certificate, and the stock or shares thereby represented shall be listed to bearer on the list of stockholders and other books of the company.

5960. Foreign registry—proxy. Any corporation which shall have issued bearer certificates may establish agencies in other states and in foreign countries whereat holders or bearers of bearer certificates may, under such regulations as the corporation shall prescribe, register and deposit their bearer certificates of stock for voting purposes. Such corporation shall have the right to appoint and prescribe the duties of, fix the compensation, and remove at pleasure its agent or agents at such agencies, and also to establish rules and regulations for registering and depositing bearer certificates of stock, and may at any time close up or terminate any such agency. Whenever, at any meeting of the stockholders of such corporation for election or other purposes, any such agent shall certify to the corporation in such manner as it may prescribe, that there is registered and deposited with him, to be held by him until after the meeting for which such registration and deposit shall have been made, a bearer certificate or certificates describing each by its face number, number of shares represented, and date of issue, and stating when and by whom deposited, the person who shall have made such deposit, may, in writing

attested by such agent, appoint some suitable person to represent him at such meeting as his proxy, and there vote the shares of stock represented by his said bearer certificate or certificates so deposited, and thereupon the person to whom such proxy shall have been given may vote the shares of stock represented by such bearer certificate or certificates, in all matters and things upon which votes are cast or had at such meeting.

5961. Notice of meetings waived. It shall not be necessary for the corporation or its officers or trustees or directors to give any personal notice or notice by mail to holders or bearers of such bearer certificates of any meeting of stockholders for the purpose of electing trustees or directors, or for any other purpose, or of any action taken or proposed to be taken by such corporation or its stockholders or its trustees or its directors at any meeting, but such notice may, in every case, be given to such holder or bearers of bearer certificates by publication in a newspaper as now provided by law, and shall be valid and binding. Every holder of a bearer certificate shall be held to have waived any notice of any stockholders' meeting for any purpose, or for any action or proposed action of the corporation or its stockholders or trustees or directors, except by publication in some newspaper when it is required by law.

5962. Bearer may vote. Except as herein provided, stock or shares of stock represented by a bearer certificate can only be voted or represented by actual production of such bearer certificate at the time of voting or representation, and by the bearer thereof. In all cases the actual production of a bearer certificate shall, so far as the corporation is concerned, be conclusive evidence of the bearer's right to vote or represent the shares it represents.

5963. Dividends payable to bearer. Dividends to holders of bearer certificates shall only be paid to the bearers thereof upon production of such certificates, except where such certificates of stock have attached to them dividend coupons payable to bearer, in which case dividends may be paid to the bearer of the proper dividend coupon upon its presentation and surrender, without the production of the certificate to which such dividend coupons belonged.

5964. Bearer certificates convertible into registered certificates. Bearer certificates may at any time be converted into registered certificates, such as are now provided for by law, upon the request of the bearer of such bearer certificates, and the surrender of such bearer certificates to the corporation and the cancellation thereof, and registered certificates may also be converted and exchanged for bearer certificates at the request of the owners of such registered certificates, and the surrender and cancellation thereof.

5965. Corporation may adopt necessary by-laws. The corporation may do all acts and adopt all by-laws and resolutions necessary or proper to carry into effect the powers herein granted, and to provide for details in the exercise thereof, subject, however, to the provisions of this act.

5966. Liability of stockholders. The stockholders of every corporation shall be severally and individually liable to the creditors of the corporation in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts and contracts made by such corpora-

tion, until the whole amount of capital stock subscribed for shall have been paid in.

5967. Payment for subscribed stock. It shall be lawful for the directors to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the directors shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

5968. Promissory notes in payment of shares of stock. Every promissory note given in payment, or in part payment of, or as evidence of a promise to pay for any shares of stock in any corporation subscribed for by the maker of such note, shall be made payable to the corporation issuing the stock so subscribed for, or to the officer or agent of such corporation through whom such stock is to be delivered to the maker of such note, and shall have written or printed across the face thereof the following words:

“Subscription note for (state number) shares of the capital stock of (state name of corporation),” and every corporation, or officer or agent thereof, accepting or receiving any such note made payable to any person other than the corporation issuing such stock, or to the officer or agent of such corporation through whom such stock is to be delivered to the maker of the note, or accepting or receiving any such note without such words being written or printed across the face thereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

5969. Same—defenses available in action on. If any such stock subscription note shall be assigned or transferred by the payee named therein to any person, association, or corporation, the maker thereof, in any action instituted to collect the same, or any part thereof, shall have the right to interpose any and all defenses which such maker might have interposed if such action had been instituted by the payee named therein.

5970. Stock issued for purchase of property. The directors of any corporation may purchase mines, manufactories, and other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, neither shall the holders thereof be liable for any further payments under the provisions of section 5966 of this code; provided, that on mines any arbitrary value may be fixed and such value shall, regardless of the actual value, be deemed the value thereof, so as to make the stock issued in payment therefor at such arbitrary value full paid stock as above defined, and wherever stock has been heretofore issued by corporations in payment for mines purchased by it, such stock so issued shall be deemed full paid stock, regardless of the actual value of the mine at the time of such purchase. In all statements

and reports of the corporation to be published, this stock shall not be stated or reported as being issued for cash paid into the corporation, but shall be reported in this respect according to the facts.

5971. Acquisition of stock or securities of other corporations. Any corporation, formed under the laws of the territory or state of Montana, whether previous to or since the taking effect of the codes on July 1, 1895, or hereafter to be formed, may purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer, or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidence of indebtedness created by any other corporation or corporations, wherever formed or organized, and while such owner may exercise all the rights, powers, and privileges of ownership, including the right to vote upon such stock; provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this section mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the state of Montana.

5971.1. Determination of stock ownership previous to payment of dividends or other corporate procedure. That any corporation heretofore or hereafter organized under any of the laws of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, shall have power, by action of its board of directors, to close the stock transfer books of the corporation for a period not exceeding forty (40) days preceding the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or the date for any other corporate action or proceeding; provided, however, that in lieu of closing the stock transfer books as aforesaid, the by-laws may fix, or authorize the board of directors to fix, in advance, a date, not exceeding forty (40) days preceding the date of the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or the date for any other corporate action or proceeding, as a record date for the determination of the stockholders entitled to receive payment of any such dividend, or any such allotment of rights, or to exercise the rights in respect of any such change or conversion or exchange of capital stock, or entitled to participate in or benefit by such other corporate action or proceeding, and, in such case, such stockholders, and only such stockholders, as shall be stockholders of record on the date so fixed, shall be entitled to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights of change or conversion or exchange of stock, or to participate in or benefit by such other corporate action or proceeding, notwithstanding any transfer of any stock on the books of the corporation, after any such record date fixed as aforesaid.

5971.2. Issuance of non par stock authorized—provisions concerning. Every corporation organized or hereafter to be organized under the general incorporation laws of the state of Montana (excepting banks, trust companies, and building and loan companies) shall have power to issue, and may provide for the issuance, of one or more classes of stock or one or more series of stock within any class thereof, without any nominal or par value, any or all of which classes or series may be of such number

of shares, with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or in any amendment thereto.

In any case in which the law requires to be stated in any articles, certificate or paper the amount of capital authorized, issued, outstanding or with which the corporation will commence business, the par value of shares or the amount of the subscriptions of the incorporators thereof, there shall be stated in respect of such nominal or nonpar shares, the number of such shares authorized, issued, outstanding or with which the corporation will commence business, that such shares are without par value, or the number of such shares subscribed for by the incorporators, as the case may be, and in cases where original or amended articles of incorporation provide only for shares without nominal or par value, such statement shall be in lieu of all requirements relating to amounts of authorized capital stock or amounts with which corporations may commence business.

The power to increase or decrease or otherwise adjust the capital stock as elsewhere provided shall apply to all or any of such classes or series of stock, provided that nothing herein contained shall be construed to prevent any corporation subject to this act from authorizing or issuing both stock with par value and stock without par value, and increasing, decreasing or adjusting either or both.

5971.3. Sale of non par stock—consent of stockholders—fully paid and non-assessable nature of non par stock. Every corporation subject to this act may issue and may sell its authorized shares without nominal or par value, from time to time, for such consideration (a) as may be prescribed in the articles of incorporation or any amendment thereof, or, if so provided in the articles of incorporation (b) as from time to time may be fixed by the board of directors, or if no such provision is made in the articles of incorporation, (c) then with the consent of two-thirds of each class of stockholders having voting powers given at a meeting called for that purpose. Such meeting shall be held on such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally or by mail, or upon written consent of all stockholders. Any and all shares without nominal or par value issued as permitted by this act, shall be deemed fully paid and non-assessable, and the holder of such shares shall not be liable to the corporation or its creditors in respect thereof.

5917.4. Equality of non par shares—statements on certificates. Every share of stock without nominal or par value shall be equal to every other share of such stock of the same class or series, and shall rank as respects any other classes or series of stock according to the preferences given each and every class or series under the terms of this act. Every certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the words "No-Par Stock", and on the reverse side thereof shall set forth in full or accurately summarize the rights and privileges, if any, given to such shares, and no such certificate shall express any nominal or par value of such shares.

5971.5. Fees applicable to non par stock—value for figuring fees. Cor-

porations exercising any privileges under this act shall be subject to and must pay all fees prescribed by section 145, of these codes, in all cases in which such corporations authorize stock with par value, and in all cases in which such corporations exercising privileges hereunder authorize stock without nominal or par value, whether in whole or in part, such corporations must pay (in addition to any fees for stock with par value actually authorized) the fees prescribed by said section 145, computed as follows: for the purpose of the fees prescribed to be paid on the filing of any articles of incorporation, certificate of incorporation, or certificate of increase of capital or stock, but for no other purpose whatever, such shares without nominal or par value shall be taken to be of the par value of one dollar (\$1.00) each.

5971.6. Provision concerning non par stock additional to other laws. The privileges and powers conferred by this act shall be deemed to be in addition to and supplemental of, any and all powers and authority conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to corporations incorporated under the general incorporation laws of this state.

5972. Anti-trust law continued in force. Nothing herein contained shall be construed as repealing any of the provisions of chapter 97, Laws of 1909, of the eleventh legislative assembly (sections 10901 to 10903), known as the anti-trust law.

CHAPTER 18

ASSESSMENTS

5973. Directors may levy assessment. The directors of any corporation formed or existing under the laws of this state, may, for the purposes of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

5974. Limitation upon amount of assessment. No one assessment must exceed five per cent. of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such percentage as will raise that amount.

5975. Levy of assessment—unpaid assessment. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this chapter for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of the preceding section.

5976. Contents of order for assessment. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than

thirty nor more than sixty days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

5977. Notice of assessment—form. Upon the making of the order the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

5978. Publication and service of notice. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent within ten days after the assessment through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and there be none, then in a newspaper published in an adjoining county.

5979. Delinquent notice—form. If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice.—There is delinquent upon the following subscribed stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts.) And in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay

delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

5980. Contents of notice. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

5981. How published. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

5982. Jurisdiction acquired by publication of notice. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

5983. Sale to be at public auction. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

5984. Highest bidder to be the purchaser. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

5985. Corporation may purchase in default of bidder. If, at the sale of stock, no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

5986. Disposition of stock purchased by corporation. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation, and the stock so purchased is held subject to the con-

trol of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

5987. Extension of time of delinquent sale. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

5988. Assessment shall not be invalidated. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same, but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must begin anew.

5989. Action for recovery of stock—limitation thereon. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

5990. Proofs of publication and sale. The publication of notice required by this chapter must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates, signed by the secretary and under the seal of the corporation, are prima facie evidence of the contents thereof.

5991. Waiver of sale—action to recover assessment. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

5992. To what corporations applicable. The provisions of this chapter only apply to such corporations whose articles of incorporation set forth the fact that the stock of such corporation is assessable.

5993. Other corporations may make stock assessable. Any corpora-

tion organized under the laws of the state of Montana whose stock is not assessable may, by and with the consent of stockholders in such corporation, holding three-fourths of the stock of such corporation, in writing, spread upon the records of such corporation, render its stock assessable, under the provisions of this chapter. The board of directors of any corporation formed under the laws of the state of Montana, where such corporation desires to avail itself of the provisions of this chapter, shall file and have recorded in the office of the secretary of state, and in the office of the county clerk and recorder where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock of such corporation has been rendered assessable by a compliance with the provisions of this section, and thereafter such corporation shall have the right to levy assessments upon its capital stock as provided in this chapter.

CHAPTER 19

POWERS AND DUTIES OF CORPORATIONS

5994. Powers of corporations. Any corporation hereafter organized, or now existing under any of the laws of the state of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation;
2. To sue and be sued, in any court;
3. To make and use a common seal, and alter same at pleasure;
4. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require;
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;
6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock;
7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation;
8. To create two (2) or more kinds of stock of such classes, with such designation, and with such voting powers, if any, with any desired limitations and restrictions thereof, as shall be stated in the original or amended articles of incorporation, and, if desired, in one or more series as to any class, and with such designation and description of the manner of issuing, preferences, limitations, restrictions, and other terms and conditions of or on which each class of stock, or series thereof, shall be issued, as shall be described and set forth in the original or amended articles of incorporation, or by resolution of the board of directors of the corporation if delegation of power so to do is set forth in the original or amended articles of incorporation. Any such corporation may also, by provision in its original or amended articles of incorporation, deny or limit to the present or future stockholders of any or all classes of stock any pre-emptive or preferential

right to subscribe to any or all additional issues of stock of any or all classes, or bonds, debentures or other obligations convertible into stock. Subject to the provisions of the constitution and laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings, such corporation may, by provision in its original or amended articles of incorporation, fix the proportion of each or any class of stock which shall be required to be represented or voted, for specified action, at any such meeting, election, vote or consent proceeding. Any such corporation shall also have power, by provision in its original or amended articles of incorporation, to issue bonds, debentures or other obligations, convertible into stock of any class, in amounts, upon the terms, in the manner and under the conditions provided by resolution of the board of directors. Any such corporation shall also have power, by provision in the original or amended articles of incorporation, or by resolution of the board of directors of the corporation, if delegation of power, so to do is set forth in the original or amended articles of incorporation, to make the stock of any class, or series thereof, convertible into stock of any other class or classes, or of any other series of the same or any other class or classes, upon such terms and conditions as shall be expressed in the original or amended articles of incorporation, or in a resolution of the board of directors of the corporation if delegation of power so to do is set forth in the original or amended articles of incorporation. The power to increase or decrease the stock, as in this code elsewhere provided, shall apply to any and all classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds ($\frac{2}{3}$) of the actual capital paid in cash or property; and such preferred stock, or any series thereof, may, if desired, be made subject to redemption at not less than par, at a price, to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum (8%) payable quarterly, semi-annually, or annually, before any dividend shall be set apart or paid on the common stock, and such dividend may be made cumulative. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock.

Before any corporation shall issue any shares of stock of any class, or series thereof, of which the designations, manner of issuing, preferences, limitations, restrictions and other terms and conditions, shall not have been set forth in the articles of incorporation, or in any amendment thereto, but shall be provided for in a resolution or resolutions adopted by the board of directors, pursuant to authority expressly vested in it by the provisions of the articles of incorporation, or an amendment thereto, a certificate, setting forth a copy of such resolution or resolutions, shall be made under the seal of the corporation, and signed by the president or vice-president, and by the secretary or an assistant-secretary of the corporation, and acknowledged by such president or vice-president before an officer authorized by the laws of Montana to take acknowledgments of deeds, and shall be filed in the office of the county clerk of the county where the

original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state.

5995. Limitation of powers. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

5996. Issuing bills prohibited. No corporation shall create or issue bills, notes, or other evidence of debt, upon loans or otherwise, for circulation as money.

5997. Reservation of power to repeal. Every grant of corporate power is subject to alteration, suspension, or repeal, in the discretion of the legislative assembly.

5998. Corporate existence cannot be questioned. One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

5999. Name. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law, but the name is to be deemed so far matter of description that a mistake in the name in any instrument may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.

6000. Corporations to organize within one year—inquiry into corporate business or incorporation. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this code, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney-general.

6001. Consolidation not to make foreign corporations. If any railroad, telegraph, telephone, express, or other corporation or company organized under any of the laws of this state, shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express, or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters that may arise as if said consolidation had not taken place.

6002. Real property—how much may be acquired by corporations. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property as provided in the Code of Civil Procedure, sections 9933 to 9958.

6003. Annual statement of corporations. Every corporation, having a capital stock, except banks, trust companies, and building and loan associations, shall by March 1st of each year hereafter, file in the office

of the county clerk and recorder of the county in which the principal place of business of such corporation is situated, (and a certified copy thereof in the office of the secretary of state.) a report of the condition of said corporation on December 31st preceding, which shall state the amount of the authorized capital stock, the proportion thereof actually paid in, and the amount thereof actually paid in in cash, and the amount issued, if any, in payment of property purchased, services rendered, or labor performed, and the amount of existing debts, and also the names and addresses of the directors or trustees, and of the president, vice-president, general manager (if any) and secretary and treasurer of the corporation. Such report shall be signed by the president or vice-president, and a majority of the directors, inclusive of the president or vice-president. The report shall be verified by the oath of the president, vice-president, secretary, or treasurer of such corporation. If the directors or trustees of any corporation shall fail to file such report, the directors of the corporation shall jointly and severally be liable for all debts or judgments of the corporation which may thereafter be in anywise incurred until such report shall be made and filed; provided, however, that if within twenty days of such failure a director or directors shall make and file, as aforesaid, an affidavit or affidavits stating that the failure was due to no fault or neglect of his or theirs, and stating also that, after the thirty-first day of December of the preceding year and before said March 1st he or they requested the president or a sufficient number of the other directors, whose residence was known to the affiants, to join them in making report, such director or directors shall not be liable under this section. If the required report be made and filed after the time herein specified, the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted. Where such corporation, on account of insolvency or for any other reason, has ceased to be a going concern, and has ceased voluntarily to incur financial obligations, the directors may include a statement to that effect in their report, giving the reasons for cessation of the corporate activities of such corporation, and after two annual reports containing such statement have been filed, the directors shall not be liable for a failure to file annual reports during the time of such cessation of corporation activities.

CHAPTER 20

PROCEDURE FOR THE SALE OF THE PROPERTY OF A CORPORATION

6004. Procedure for sale, lease, etc., of corporate property. The board of directors or trustees of any stock corporation heretofore or hereafter organized under the laws of the territory or state of Montana, whether formed and existing before or after the taking effect of the Codes on July 1, 1895, whether solvent or insolvent, whether a going concern or otherwise, including mining corporations, shall have power, and upon request of stockholders representing at least one-half ($\frac{1}{2}$) of the capital stock outstanding and of record on the books of the corporation, and

entitled, under the articles of incorporation, or amendments thereto, and the laws and constitution of Montana, to vote at the meeting hereinafter provided for, it shall be their duty to call by resolution a meeting of the stockholders of such corporation, appearing as such upon its books, and entitled to vote at such meeting, as aforesaid, for the purpose of considering the question of selling, leasing, mortgaging, exchanging, or otherwise disposing of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise. Such meeting shall be held at the principal place of business of such corporation, and at least thirty (30) days previous notice of the time and place of such meeting shall be given to each person who appears as a stockholder upon the books of the corporation and is entitled to vote at such meeting, as aforesaid. The secretary of the corporation shall make out and deposit in the United States post office, postage paid, a notice of such meeting, directed to each stockholder of record of the corporation, entitled to vote at such meeting, as aforesaid, by his name and his place of residence appearing on said records, and shall make and file his affidavit of such deposit. Such notice shall be considered as given upon the deposit of the same in the post office, as above required. The notice shall state the time, place, and the purpose of the meeting, and shall contain a complete and specific statement of the proposal to be considered and acted upon at said meeting, including in all cases where only a part of the property of such corporation is affected, a general description of the property proposed to be sold, leased, mortgaged, exchanged, or otherwise disposed of. A similar notice shall also be published at least once a week for at least four (4) consecutive weeks preceding the day of said meeting, in some newspaper of general circulation published in the county wherein the principal place of business of such corporation is located, or if there is no newspaper published in said county, then in the nearest county thereto wherein a newspaper is published, and said publication shall be proven by affidavit of publisher or clerk of such newspaper, filed with the secretary of such corporation. Upon the day appointed for said meeting, if stockholders representing at least two-thirds ($\frac{2}{3}$) of the whole number of shares of the capital stock of the corporation then outstanding, and of record on the books of the corporation, and entitled to vote at such meeting, as aforesaid, appear in person or by agents or proxies filed with the secretary, the stockholders shall organize by electing one (1) of their number chairman, and some suitable person secretary. Thereupon any proposition for the sale, lease, mortgaging, exchange, or other disposition of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise, may be considered and acted upon by said meeting, and if stockholders representing at least two-thirds ($\frac{2}{3}$) of the whole number of shares of the capital stock of said corporation then outstanding, and of record on the books of the corporation, and entitled, as aforesaid, to vote at such meeting, appearing at said meeting in person or by agents or proxies, as above provided, vote in favor of any such proposition, whether proposed by the

directors or trustees, or not, as said stockholders may see fit, which proposition shall be in the form of a resolution specifying the particulars thereof and entered on the minutes of said stockholders' meeting, the said proposition or resolution shall be taken and adopted as the act of the corporation, and shall be carried out as such, and shall be approved and adopted by the board of directors or trustees; provided that, if the corporation shall have, by provision in its original or amended articles of incorporation, fixed the proportions of each or any class of capital stock, then outstanding and entitled to vote, as aforesaid, which is required to be represented at the meeting, and voted in favor of the adoption of any such proposition or resolution, then the representation and vote required shall also be in accordance with such provision in such original or amended articles of incorporation, as well as in accordance with the foregoing provisions that the holders of at least two-thirds ($\frac{2}{3}$) of the whole number of shares of the capital stock of the corporation, then outstanding and entitled to vote, as aforesaid, be present or represented and vote in favor of the adoption of such proposition or resolution. The secretary of such meeting shall enter upon the minutes of said stockholders' meeting the total number of shares, and the number of shares of each class, voted for or against the proposition or resolution, and by whom voted, and stockholders voting against said proposition or resolution shall be taken as dissenting therefrom. Upon the adoption of any proposition or resolution such as above referred to, by the stockholders' meeting the secretary of the meeting shall make out a true and complete copy of the minutes of the stockholders' meeting, which shall be signed by the chairman of such meeting, and attested by said secretary and verified by them and acknowledged as required in the case of conveyance of real estate, and shall file the same for record in the office of the county clerk and recorder of the county wherein the principal office or place of business of such corporation is situated, and also in the office of the county clerk and recorder of any other counties wherein any of the real property included in the proposition or resolution adopted by said stockholders' meeting is situated, and said record shall impart notice and have the same effect as other instruments required by law to be recorded, and such copies so filed and recorded, or the record thereof, or the certified copy of such record, shall be prima facie evidence of the matters and facts therein stated, and thereupon, and upon the adoption and approval by the board of directors or trustees of the corporation of such proposition or resolution, the corporation and its officers shall have full power and authority to do all acts and to execute all conveyances or other instruments in writing which are necessary or proper to carry out the said proposition or resolution, and the sale, lease, mortgage, exchange, or other conveyance of the whole or any part of the property of said corporation, authorized by said proposition or resolution, shall thereupon take effect and have the same force as if all the stockholders of the corporation had consented thereto; provided, that nothing contained in this act shall be deemed to limit or restrict the powers of the board of directors or trustees of such corporation in relation to the disposition of property or the conduct of business; nor shall this act be so construed as to affect any cases now pending in the courts of this state or of the United States; provided, further, that at any meeting of

the stockholders of any corporation called and noticed in the manner provided by this section, the stockholders may, by the vote of the holders of two-thirds ($\frac{2}{3}$) of the issued and outstanding stock of record on the books of the corporation, and entitled, under the articles of incorporation, and the amendments thereto, and the laws and constitution of Montana, to vote at the meeting, in lieu of the resolution hereinbefore provided for, adopt a by-law giving the board of directors of such corporation such general authority to sell, lease, mortgage, exchange or otherwise dispose of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise, as the stockholders by such by-law may prescribe; provided that, if the corporation shall have, by provision in its original or amended articles of incorporation, fixed the proportions of each or any class of capital stock, then outstanding and entitled to vote, as aforesaid, which is required to be represented at the meeting, and voted in favor of the adoption of such by-law, then the representation and vote required shall also be in accordance with the provision in such original or amended articles of incorporation, as well as in accordance with the foregoing provisions that the holders of at least two-thirds ($\frac{2}{3}$) of the issued and outstanding stock of record on the books of the corporation, and entitled to vote, as aforesaid, must vote in favor of the adoption of such by-law. The resolution calling the meeting and the notice mailed to stockholders and published shall state that the meeting is called for the purpose of considering the adoption of a by-law empowering the board of directors of the corporation to sell, lease, mortgage, exchange, or otherwise dispose of the whole or any part of the property and assets of every kind and description of such corporation, for property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or otherwise. In all other respects notice shall be given and the meeting shall be had and a copy of the minutes thereof shall be filed as provided by this section. In case such by-law be adopted at said meeting the board of directors shall thereafter have the authority granted thereby so long as said by-law shall remain in force, but any by-law so adopted may be repealed by a vote of the holders of two-thirds ($\frac{2}{3}$) of the issued and outstanding stock of the corporation entitled under the articles of incorporation, and amendments thereto, and the laws and constitution of Montana, to vote at a meeting hereinabove, in this section, provided for, at any annual meeting of the stockholders or at any special meeting of the stockholders called in the manner provided by this section.

6005. Dissolution. If a disposition shall be made by sale, as above provided, of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up, as provided for in other cases of the dissolution of corporations.

6006. Rights of dissenting stockholders. Any stockholder who shall not, at said stockholders' meeting, have voted for or authorized the proposition or resolution for the disposition of property which may have been adopted at such stockholders' meeting, may, within twenty days after the date of the stockholders' meeting, give written notice to the said corporation that he does not assent thereto, and also a like notice to the grantee

or vendee, or any agent or representative of such grantee or vendee; provided, that such grantee or vendee, or agent or representative of such grantee or vendee, be within the state and demand payment of the value of his stock, and within ten days after service of said notice he must, or the said corporation, or its grantee or vendee, may, make application in the district court of the county where the principal place of business of the corporation is situated to have the value of his stock fixed and appraised, of which application at least ten days' previous notice must be given by the person so applying to the other parties. The notices hereinbefore provided for may be served in the manner provided by law for the service of summons in cases in the district court. Upon said application, the said district court shall appoint three competent and disinterested persons as appraisers, and designate the time and place of their first meeting to appraise the value of the stock of such dissenting stockholders, and give them such directions as the said court may think proper. The court may fill any vacancies in the board of appraisers, occurring by refusal or neglect to serve, or otherwise. Said appraisers shall meet at the time and place designated by the court, and they or any two of them shall take an oath to honestly and faithfully discharge their duties, and shall hear and take evidence in relation to the value of the stock of such dissenting stockholder at the time of his dissent, and find the value thereof, and return and file their report and appraisal with the clerk of said court. The charges and expenses of said appraisal shall be paid by the corporation, or its grantee or vendee.

6007. Appeal from appraisal—payment of appraisements to dissenting stockholders and release of interest—lien of appraisal on property disposed of. Either party to the appraisal and award of such appraisers may, within thirty days from the filing of the same and service of notice thereof, appeal from such award to the district court of the county in which the same is made and filed, and thereupon the value of such stock shall be reassessed by a jury in the same manner as appeals are taken and trials had on appeals from the assessment of commissioners in condemnation proceedings provided by law. When such appraisal or award shall become final, the court shall enter judgment in favor of such dissenting stockholders and against the corporation and its grantee or vendee for the amount of said award, with expenses and costs of proceedings, and execution may be issued on said judgment as in other cases. The judgment may also provide for the sale of the property affected by the lien hereinafter provided for. The claim of such dissenting stockholder for compensation and costs, as aforesaid, and the appraisal and award and judgment thereon shall be and remain a lien upon all the real property of the corporation so conveyed or disposed of in pursuance of the stockholders' resolution, and shall be prior and superior to the rights of the grantee or vendee to all such property; but the claims of all dissenting stockholders for compensation, and their several appraisements, awards, and judgment, shall be equal liens upon said property, without precedence or priority between themselves. When the amount of such appraisements and costs shall have been paid to or collected by such dissenting stockholder, or deposited with the clerk of the said court for him, he shall cease

to have any interest in said stock or in the corporate property of such corporation which may have been sold or disposed of in pursuance of the resolution of the stockholders' meeting, as herein provided, and the stock of such dissenting stockholders shall thereupon become the property of the party satisfying the said judgment or appraisal, unless otherwise provided for by contract between such corporation and its grantee.

CHAPTER 21

CORPORATE RECORDS

6008. Corporate records—to consist of what, and how kept. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and, in the record of directors' meetings, who absent. If requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full, and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation; provided, that in lieu of embracing in the record of stockholders' or members' meetings who were present, a list showing the names of those present at any such meeting, certified by the chairman and secretary thereof, may be filed and kept in the office of the secretary of the corporation.

6009. Other records to be kept by corporations for profit, and others. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "stock and transfer book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid and unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

CHAPTER 22

DISSOLUTION OF CORPORATIONS

6010. Dissolution of corporations. A corporation is dissolved:

1. By expiration of the time limited by its charter, provided its corporate existence is not extended within five years after such expiration; or,
2. By a judgment of dissolution in the manner provided by sections

9576 to 9601 of the Code of Civil Procedure governing quo warrant proceedings and in the manner provided by sections 9922 to 9928 of said code governing voluntary dissolution of corporations by decree of court; or,

3. By an act of the legislative assembly; or,

4. A corporation which has ceased to transact business and which has no assets may likewise be dissolved by the directors in the manner provided by sections 9929 to 9932 of the Code of Civil Procedure.

6011. Winding up the affairs of and disposing of the property of dissolved corporations. The directors of any dissolved corporation who are such at the time such corporation shall become dissolved, become upon such dissolution the trustees of the creditors and stockholders of such corporation. Such trustees shall settle the affairs of such corporation, liquidate its assets and apply the proceeds of such liquidation to the payment of the expenses of such trustees, to the payment of its debts and other obligations, and distribute any surplus remaining to the stockholders of such corporation, in a proceeding in the district court of the county in which the principal place of business of such corporation was situated at the time of its dissolution. The procedure provided by the code of civil procedure for the probate of estates of deceased persons shall be followed in such proceeding, except that notice to creditors shall be published in each county in the state of Montana in which any real estate owned by such corporation at the time of its dissolution shall be situated, and that the time for presentation of claims shall in all cases be four (4) months from the date of the first publication of such notice; that sales of real property may be for cash, or upon option, with or without lease; that notice of any petition for final distribution shall be directed to the same persons and shall be served in the same manner as provided by Chapter 63 of the code of civil procedure in the case of summons in an action to quiet title under that chapter as against the world; and that the money or property of such corporation subject to distribution shall be distributed pro rata to those persons who shall, upon the hearing of such petition for distribution, establish their ownership of capital stock of such corporation, according to their respective stock ownerships, as so established in such proceeding.

The court may, if it shall determine that it is to the best interests of the stockholders, distribute to such stockholders any property remaining after the payment of expenses of administration and of the debts of such corporation, without requiring that the same be turned into cash.

The courts shall also have power, and, upon the petition of the holders of the majority of the stock held by the persons who shall in such proceeding establish their ownership of stock of such corporation, it shall be its duty, to direct the transfer of the property of such corporation, subject to distribution, to a new corporation organized under the laws of the state of Montana, for the same purposes for which such dissolved corporation was organized, in exchange for all of the authorized capital stock of such new corporation, such capital stock to be issued pro rata to the persons so establishing their right to receive distribution of the property of said dissolved corporation, in accordance with the number of shares established by them respectively in the proceeding above provided for.

All conveyances or other transfers of the property of such dissolved

corporation executed and delivered by such trustees in accordance with the provisions of this section shall be effective to convey the legal title to the property described therein.

In the case of a corporation composed of members instead of stockholders the same procedure shall apply, and in any such case, for the purposes of this section, the word "stockholder" shall mean "member" and the word "stock" or the words "capital stock" shall mean "interest", "units" or other words descriptive of the interest of such members in such corporation and its assets.

The term "trustees" as herein used shall include the singular as well as the plural.

A corporation shall be deemed to be dissolved within the meaning of this section whenever its corporate powers shall have been completely lost by lapse of time, by the final judgment of a court of competent jurisdiction, by the action of its stockholders or members, or in any other manner.

In the event all of the directors of such dissolved corporation, who were such at the time of the dissolution of such corporation, shall have died, resigned, or refuse or be unable to act, the district court of the county in which was situated the principal place of business of such corporation at the time of its dissolution, shall, upon petition of a trustee, stockholder or creditor of such corporation, and upon a sufficient showing of the necessary facts, appoint a trustee or trustees who shall have the same powers and duties as are by this section conferred and imposed upon the directors of such corporation who were such at the time of the dissolution of such corporation.

Any receiver or trustee appointed under the provisions of chapter 45 of the code of civil procedure shall be governed by the provisions of this section as well as by the provisions of said chapter 45.

Fees shall be allowed to the trustees and their attorneys in accordance with the provisions of Chapter 135 of the code of civil procedure.

The provisions of this section shall apply to any corporation heretofore or hereafter dissolved and whether or not it owes debts or has other unfinished business, and such proceeding may be for the sole purpose of disposing of the assets of such corporation in one of the methods prescribed and permitted by this section.

In the case of a corporation which shall have become dissolved at or prior to the passage and approval of this act but has no affairs requiring a settlement or liquidation but owned real property which has not been disposed of, any stockholder may, in lieu of the proceeding hereinabove authorized, bring an action under the provisions of chapter 63 of the code of civil procedure for the purpose of determining the ownership of the real estate of such corporation.

In such case the decree shall award such real estate to the persons who shall in such proceeding establish their ownership of capital stock of such corporation, pro rata, according to their respective stock ownerships, as so established in such proceeding.

In such action the court may allow the plaintiff a reasonable attorney's fee for bringing and prosecuting such action.

The surviving trustees of any dissolved corporation or the trustees

appointed in lieu thereof as provided by statute may sue and be sued with the same effect as such dissolved corporation might have sued or have been sued had it not become dissolved.

The term "stockholder", as used in this section, shall include not only stockholders of record upon the books of such corporation, but their successors in interest in the ownership of stock of such corporation.

Sec. 2. In the event any portion of said section 6011 as amended by this act, shall, by a court of competent jurisdiction, be finally held to be unconstitutional for any reason, the remainder of said section shall nevertheless continue in force, provided such remaining provisions are workable and will effectuate any of the purposes of this act.

Sec. 3. This act shall be in full force and effect from and after the date of its passage and approval.

Approved March 18, 1937.

As amended by chapter 198, Laws of 1937.

6011.1. Secretary of state to notify corporation of expiration of charter.

It shall be the duty of the secretary of state to notify every corporation hereafter organized not less than three months, nor more than six months before the date of the expiration of its charter when its charter shall expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the articles of incorporation.

6011.2. Directors to wind up business of expired corporation. If such corporation does not extend the term of its existence as provided by law, or if it is at the expiration of the term of such existence, the corporation shall cease to use the corporate name and its business shall be wound up by the trustees or directors in their names as such trustees or directors.

6011.3. Resolution providing for, and certificate authorizing continuation of corporate existence to wind up affairs—term of extension—fee. If the directors or trustees of any corporation desire to continue the use of the corporate name and continue the corporate existence for the purpose of winding up the business of such corporation, they shall at a regular meeting, or a meeting called for that purpose, pass a resolution declaring its purpose to continue the corporate existence and the use of the corporate name for the purpose of winding up the business of the corporation only, and file such resolution in the office of the clerk and recorder of the county wherein it is located and its office and principal place of business, and file a certified copy thereof in the office of the secretary of state and pay a fee of five per centum (5%) of the amount paid for filing the original articles of incorporation, and the secretary of state shall thereupon issue a certificate certifying the corporate existence of such corporation is extended for a period of three years for the purpose of winding up its business.

6011.4. Authority granted by certificate. Upon the issuance of such certificate the directors shall be authorized to use the corporate name for the purpose of winding up the business of such corporation, may transact all such business in the name of the corporation, sue and be sued, make contracts, convey real estate and other property and use the corporate seal, and for the purpose of winding up the business of the corporation,

the existence of said corporation shall be extended for a further period of three years.

6011.5. Limitation of actions by person claiming through dissolved corporation. Whenever any corporation organized under the laws of Montana or any foreign corporation owning real property in Montana or any interest therein, shall have been dissolved, either by expiration of the period limited in its charter or by decree of dissolution, or in any other manner whatsoever, no action for the recovery of any real property owned by such corporation or for possession thereof or for rents or profits of the same, shall be maintained by anyone claiming under or through such corporation, either as stockholder, officer, director, trustee or otherwise, unless such action is instituted within ten (10) years from and after the date of dissolution of such corporation.

CHAPTER 23

SCOPE OF LAW—RIGHT OF LEGISLATURE TO REPEAL

6012. Scope of corporation laws. The provisions of sections 5900 to 6013 of this code are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in said sections, in which case the special provision prevails.

6013. Chapter and section may be repealed. The legislative assembly may at any time amend or repeal this part, or any chapter, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

NOTE—The word "part" as used above refers to a division of the 1921 code. Sections 5900 to 6662 of this code were included.

CHAPTER 24

BANKS RESTRICTION ON NAMES

6014.33. Business prohibited unless under superintendent of banks. No person, firm, company, co-partnership, or corporation, either domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received a certificate to do a banking business from the superintendent of banks, shall advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise, and issuing notes or certificates of deposit therefor, or shall make use of any office sign, at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business, transacted, nor shall any such person, or persons, firm, company, co-partnership, or corporation, domestic or foreign, make use of or circulate any letter-heads, bill-heads, blank notes, blank receipts, certificates, or circulars,

or any written or printed or partly written and partly printed paper, whatever, having thereon any artificial or corporate name or other word or words indicating that such business is the business of a bank, savings bank, or trust or investment company; nor shall any such person, firm, company, co-partnership, or corporation, or any agent of a foreign corporation, not having an established place of business in the state, solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust or investment company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust, or investment company. Nor shall any person, firm, company, co-partnership, or corporation, domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received from the superintendent of banks a certificate to do a banking business, hereafter transact business under any name or title which contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company." Any person, firm, company, co-partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks, the court may issue an injunction restraining any such person, firm, company, co-partnership, or corporation from further using such words in violation of the provisions of this section, or from further transacting business in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust, or investment company, during the pendency of such action, and for all time, and may make such other order or decree as equity and justice may require.

6014.35. Foreign corporations. Any corporation organized under the laws of any country or state other than this state, which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state, and, for that purpose, may maintain offices in this state, and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this act as to the use of any words in the name, sign, or advertising matter of corporations not under the supervision of the superintendent of banks.

CHAPTER 25

MORRIS PLAN CORPORATION

6109.1. "Morris plan company"—meaning of term. The term "Morris Plan Company" as used in this act means any corporation formed under the provisions of this act.

6109.2. Establishment of Morris Plan Company—procedure. Any number of adult persons, residents and not less than five, may associate to establish a Morris Plan Company under this act. The incorporators shall execute a certificate of incorporation or application for articles of incorporation, which shall be acknowledged by at least three of the subscribers

thereto before a notary public, and they shall also make and subscribe an oath or affirmation before him to be endorsed on the said certificate that the said statements therein contained are true. The said certificate accompanied by proof of publication of notice as hereinafter provided shall then be presented to the governor of the state, who shall examine the same and if he finds it to be in proper form and within the purposes named in this act, he shall approve thereof, and endorse his approval thereon, and direct articles of incorporation to issue in the usual form incorporating the subscribers and their associates and successors into a body corporate of the name chosen, and the said certificate shall be recorded in the office of the secretary of the state, in a book to be kept by him for that purpose, and he shall forthwith furnish to the state banking department an abstract therefrom, showing the name, location, amount of capital stock, and the name and address of the treasurer of such corporation; the said original certificate with all its endorsements shall then be recorded in the office for the recording of deeds in and for the county where the business of the corporation is to be carried on, and from thenceforth the subscribers and their associates and successors shall be a corporation for the purposes and upon the terms named in the said charter. Certified copies of such certificate, duly certified by the secretary of this state, shall be conclusive evidence in all courts of this state of the existence of such corporation and of every other matter or thing which could be proved by the production of the original certificate.

6109.3. Contents of application for articles of incorporation. The certificate of incorporation or application for articles of incorporation shall specify:

- I. The name (subject to the approval of the secretary of this state).
- II. Location or place of business, particularly designating the county or city.
- III. Amount of capital stock and number of shares into which divided.
- IV. The names and places of residences of the incorporators, and the number of shares subscribed by each.
- V. A statement that such certificate is made to enable the persons named to form a Morris Plan Company under this act.
- VI. The term for which it is to exist.

6109.4. Population, capital and surplus requirements for organizing. No corporation shall be organized under this act to do business in a city having a population of less than twenty thousand inhabitants, and that such corporation shall have an aggregate amount of capital stock of not less than twenty-five thousand dollars, and a surplus of 10% of the paid-in capital stock.

6109.5. Shares of stock—par value—payment and deposit of capital required before doing business. The capital stock of any such corporation shall be divided into shares of the par value of one hundred dollars each. All of the capital stock shall be paid in cash to the treasurer of the corporation, who shall deposit the same in some bank approved by the superintendent of banks, before any such corporation shall be authorized to transact any business other than such as relates to its formation and organi-

zation, and such payment shall be certified to the state banking department under oath by the president and manager of said corporation.

6109.6. Name of company. Every corporation incorporated under this act shall be known as a Morris Plan Company, and may use the words "Morris Plan Company" as part of its corporate title.

6109.7. Powers of Morris Plan Companies. Every corporation formed under the provisions of this act shall, from the date of charter of incorporation issued thereto, be a body corporate, but shall transact no business except such as may be incidental to the purpose of its organization until all of the capital has been paid in as hereinbefore provided, and shall have the following powers:

I. To have succession by the name designated in its certificate of incorporation for the term of twenty-five years from the date of incorporation, unless sooner dissolved.

II. To sue and be sued, to appear and defend in all actions and proceedings under its corporate name and to the same extent as a natural person.

III. To have a common seal and alter the same at pleasure.

IV. To elect or appoint all necessary officers, agents, and servants, define their duties and obligations, fix their compensation, dismiss them, fill vacancies and require bonds.

V. To make, amend and repeal by-laws and regulations, not inconsistent with law, for its own government, for the orderly conduct of its affairs and the management of its property, for determining the manner of calling and conducting its meetings, the tenure of office of the several officers, and such others as shall be necessary or convenient for the accomplishment of its purposes, which by-laws and amendments thereto must be approved by the superintendent of banks.

VI. To lend money and to deduct interest therefor in advance at lawful rates of interest and in addition to require and to receive uniform weekly or monthly installments on its certificates of indebtedness purchased by the borrower simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments, provided, however, that no such corporation shall charge or receive interest in excess of the legal rate of interest provided for in the state of Montana.

VII. To buy, sell, or negotiate bonds, notes and choses in action and to sell or negotiate evidences or certificates of indebtedness or investment of the corporation calling for the payment of money at any time, either fixed or uncertain and to receive payments therefor in installments or otherwise.

VIII. To purchase or otherwise acquire and to sell and negotiate drafts and acceptances drawn in connection with the sale of merchandise on account of the purchase price thereof and to take from the acceptors or holders of such drafts and acceptances as security therefor, with or without other collateral, choses in action or other evidences of indebtedness issued by it and to be paid in uniform monthly, weekly or other periodical installments.

IX. To charge for a loan made pursuant to this action one dollar for each fifty dollars or fraction thereof loaned for expenses incurred in mak-

ing the loan; no charge shall be collected unless a loan shall have been made.

6109.8. Limitation of powers relating to deposits. The power conferred upon corporations organized under this act by the foregoing action shall not be construed as authorizing such corporation to receive deposits of money subject to check, payable on demand, or payable unconditionally at a fixed time.

6109.9. Limit on amount of loan to one person and period of loan—deposit of funds with other corporation. No Morris Plan Company shall:

(a) Make any loan to one person, firm or corporation for more than ten per centum of the amount of the capital and surplus of such Morris Plan Company.

(b) Make any loan under the provisions of this act for a longer period than one year from the date thereof.

(c) Deposit any of its funds with any other corporation unless such corporation has been designated as such depository by a vote of the majority of the directors, exclusive of any director who is an officer, director or trustee of the depository so designated, present at a meeting duly called at which a quorum is in attendance. Such bank must first be approved by the superintendent of banks as a depository bank for such company.

6109.10. Resident requirements of directors. At least three-fourths of the directors of any Morris Plan Company shall be residents of the state of Montana.

6109.11. Supervision of state banking department. Every corporation incorporated under the provisions of this act shall report to, and be subject to, the supervision of the state banking department.

CHAPTER 26

CREDIT UNIONS

6109.12. Purpose—definition of credit unions. A credit union is a co-operative society incorporated for the twofold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident purposes, and shall be known in this act as credit union associations, and shall be under the supervision of the state examiner and ex-officio superintendent of banks whose duty it shall be to enforce all laws with respect thereto. Such organizations shall have continual succession and shall be organized under and governed solely by the provisions of this act.

6109.13. Incorporation of credit union association. Whenever any number of persons not less than five (5) shall desire to incorporate a credit union association having for its object the conduct and operation of such an association as defined in this act they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

1. The name shall not be the same or too closely resembling that in use by any existing corporation established under the laws of this state.

The words credit union shall form a part of the name of the association, and no corporation not organized under this act shall be entitled to use a name embodying said combination of words, provided any association now existing may continue their present names.

2. The principal office, or place of business of the association shall be designated in said articles and shall be within this state.

3. The par value of the shares of the credit union which shall not exceed ten dollars (\$10.00) each.

4. A provision that such association is organized under this act for the purposes herein expressed.

5. The names and residences of the persons who subscribe and acknowledge the said declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

6109.14. Certified copy of articles of incorporation as evidence. A certified copy of any articles of incorporation filed in pursuance of this act must be received in all courts and other places as prima facie evidence of the facts therein stated.

6109.15. Evidence of corporate character. The certificate issued by the secretary of state in pursuance of this act, or a certificate issued by the superintendent of banks setting forth that any association has fully complied with the provisions of this act, and is lawfully authorized to transact business in this state shall be admitted in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such association, and of its right to transact business in this state excepting in an action prosecuted by the state in the nature of quo warranto.

6109.16. By-laws. Contemporaneously with or immediately following the execution of said articles of incorporation provided for in the preceding sections the incorporators then acting in capacity of directors shall adopt appropriate by-laws to govern and prescribe the method and the officers by whom the business of the association shall be conducted. The by-laws shall be in conformity with the provisions of this act, and at all times during regular hours of business shall be open to inspection of the members at its principal place of business. The by-laws, among other things, shall especially provide for the character and method of conducting the business of the corporation, with rules governing the addition of members, the sale of its shares, the amount of membership fee; provide for the annual meeting of the shareholders; for the annual election and qualification of directors and for the term and period during which the directors shall serve; provided that the said term or period for all directors shall not be less than one nor more than three (3) years, and that the directors shall be so elected that as soon as possible the term of an equal number shall expire each year; for the appointment of officers; for the adoption, ratification and amendment of the by-laws, and which adoption, ratification and amendment may be made either by the stockholders or board of directors; for the method of voting at such annual meeting and for the periodical investigation of the business and condition of such association. Provided, however, that no by-laws and no change or amendment thereof shall be effective until first approved by the state examiner and ex-officio superintendent of banks and provided further that no such association shall commence the transaction

of business as such until the by-laws are first approved by the superintendent of banks.

6109.17. Supervision of credit unions by state examiner—fee for examinations. Credit unions shall be under the supervision of the state examiner of the state of Montana. They shall report to him at least semi-annually on or before June thirtieth (30th) and December thirty-first (31st) of each year. The state examiner shall examine all credit unions doing business in this state at least once a year. Also whenever ten per centum (10%) of the subscribed stock of any credit union files a written application with said state examiner requesting him to make examination of said credit union he shall forthwith examine the same, and the expense of making such examination, including living expenses and transportation, together with a fee of fifteen dollars (\$15.00) for each day actually consumed in the examination shall be paid by the association examined, and the findings of the examiner to be available to the petitioners and the board of directors of the credit union notwithstanding any other provisions of law.

6109.18. Restriction on use of words “credit union” in name. It shall be a misdemeanor for any person, association, copartnership or corporation (except corporations organized in accordance with the provisions of this act) to use the words credit union in their name or title.

6109.19. Powers of credit unions. A credit union shall have the following powers:

(a) To receive the savings of its members either as payment on shares or as deposits (including the right to conduct Christmas clubs, vacation clubs and other such thrift organizations within the membership).

(b) To make loans to members for provident or productive purposes.

(c) To make loans to a cooperative society or other organization having membership in the credit union.

(d) To deposit in state and national banks and, to an extent which shall not exceed twenty-five per centum (25%) of its capital, invest in the paid-up shares of building and loan associations and of other credit unions.

(e) To invest in any investment legal for savings banks or for trust funds in the state.

(f) To borrow money as hereinafter indicated.

(g) To own and hold real and personal property.

6109.20. Membership. Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least one share, pay the initial installment thereon and the entrance fee. Organization (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union organization shall be limited to groups (of both large and small membership) having a common bond of occupation, or association or to groups within a well-defined neighborhood, community or rural district.

6109.21. Penalty for failure to report—revocation. For failure to file reports when due, unless excused for cause, the credit union shall pay to the treasurer of the state five dollars (\$5.00) for each day of its delinquency. If the said state examiner and ex-officio superintendent of banks determine that the credit union is violating the provisions of this act, or is

insolvent, the said state examiner and ex-officio superintendent of banks may serve notice on the credit union of his intention to revoke the certificate of approval. If, for a period of fifteen (15) days after said notice, said violation continues, the said state examiner and ex-officio superintendent of banks may revoke said certificate and take possession of the business and property of said credit union and maintain possession until such time as he shall permit it to continue business or its affairs are finally liquidated. He may take similar action if said report remains in arrears for more than fifteen (15) days.

6109.22. Fiscal year—meetings. The fiscal year of all credit unions shall end December thirty-first (31st). Special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote whatever his share holdings. To amend the by-laws, the proposed amendment must be contained in the call for the meeting and it must be approved by three-fourths ($\frac{3}{4}$) of the members then present (which number must constitute a quorum) and by the said state examiner and ex-officio superintendent of banks. There shall be no voting by proxy, a member other than a natural person casting a single vote through a delegated agent.

6109.23. Elections. At the annual meeting (the organization meeting shall be the first annual meeting) the credit union shall elect a board of directors of not less than five (5) members, a credit committee of not less than three (3) members and a supervisory committee of three (3) members, all to hold office for such terms respectively as the by-laws provide and until successors qualify. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the state examiner and ex-officio superintendent of banks within ten (10) days of their election.

6109.24. Directors and officers—duty of directors. At their first meeting the directors shall elect from their own number a president, vice-president, treasurer and clerk, of whom the last two named may be the same individual. It shall be the duty of the directors to have general management of the affairs of the credit union, particularly:

- (a) To act on applications for membership.
- (b) To determine interest rates on loans and deposits.
- (c) To fix the amount of the surety bond which shall be required of all officers and employees handling money.
- (d) To declare dividends, and to transmit to the members recommended amendments to the by-laws.
- (e) To fill vacancies in the board and in the credit committee until successors are chosen and qualify.
- (f) To determine the maximum individual share holdings and the maximum individual loan which can be made with and without security.
- (g) To have charge of investments other than loans to members.

The duties of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager. No member of the board or of either committee shall, as such, be compensated.

6109.25. Credit committee—powers and duties. The credit committee shall have the general supervision of all loans to members. Applications

for loans shall be on a form, prepared by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and approval must be unanimous. The credit committee shall meet as often as may be necessary after due notice to each member.

6109.26. Supervisory committee—powers and duties. The supervisory committee shall:

(a) Make an examination of the affairs of the credit union at least quarterly, including an audit of its books and, in the event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.

(b) Make an annual audit and report and submit the same at the annual meeting of the members.

(c) By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director or member of committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote the supervisory committee may call a special meeting of the members to consider any matter submitted to it by said committee. The said committee shall fill vacancies in its own membership.

6109.27. Capital—lien on shares and deposits as security for loan—entrance fee may be provided for. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee as may be provided by the by-laws.

6109.28. Minors—powers. Shares may be issued and deposits received in the name of a minor or in trust in such manner as the by-laws may provide. The name of the beneficiary must be disclosed to the credit union.

6109.29. Rates of Interest. Interest rates on loans made by a credit union shall not exceed one per centum (1%) a month on unpaid balances.

6109.30. Power to borrow. A credit union may borrow from any source in total sum which shall not exceed fifty per centum (50%) of its assets.

6109.31. Loans. A credit union may loan to members. Loans must be for a provident or productive purpose and are made subject to the conditions contained in the by-laws. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business. No director, officer or member of committee may borrow from the credit union in which he holds office beyond the amount of his holdings in it in shares and deposits, nor may he endorse for borrowers.

6109.32. Reserves. All entrance fees, (which may be provided by the by-laws for failure to make repayments on loans and payments on shares when due), and each year, before the declaration of a dividend, twenty

per centum (20%) of the net earnings, shall be set aside as a reserve fund which shall be kept liquid and intact and not loaned out to members, and shall belong to the corporation to be used as a reserve against bad loans and not be distributed except in case of liquidation.

6109.33. Dividends. On recommendation of the directors, a credit union may, at the end of the fiscal year, declare a dividend from net earnings, which dividend shall be paid on all shares outstanding at the end of the fiscal year. Shares which become fully paid up during the year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full.

6109.34. Expulsion—withdrawal. A member may be expelled by a two-thirds ($\frac{2}{3}$) vote of the members present at a special meeting called to consider the matter but only after a hearing. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. The credit union may require sixty (60) days notice of intention to withdraw shares and thirty (30) days notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

6109.35. Dissolution. The process of voluntary dissolution shall be as follows:

(a) At a meeting called for the purpose (notice of which purpose must be contained in the call), four-fifths ($\frac{4}{5}$) of the entire membership of the credit union may vote to dissolve the credit union.

(b) Thereupon they file with the said state examiner and ex-officio superintendent of banks a statement of their consent to dissolution, attested by a majority of the officers and including the names and addresses of the officers and directors.

(c) The state examiner and ex-officio superintendent of banks determine whether or not the credit union is solvent. If such is the fact he issues in duplicate a certificate to the effect that this section has been complied with.

(d) The certificate is filed with the county clerk of the county in which the credit union is located, whereupon the credit union is dissolved and shall cease to carry on business except for the purpose of liquidation.

(e) The credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up, for three (3) years.

6109.36. Change in place of business. A credit union may change its place of business on written notice to said state examiner and ex-officio superintendent of banks.

6109.37. Taxation. Every credit union shall be assessed for and pay taxes upon its office furniture and fixtures and all real estate acquired in

the course of its business. The amount standing to the credit of each member of any such credit union, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares upon which loans have been made, or money advanced, by the credit union, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. The shares of a credit union shall not be subject to a stock transfer tax when issued by the corporation or when transferred from one member to another.

6109.38. Disposal of fees—fee for filing and recording articles of incorporation. All fees and expenses collected by the state examiner and ex-officio superintendent of banks from credit unions for examination shall be deposited with the state treasurer for the credit of the general fund. The secretary of state shall charge a flat fee of five dollars (\$5.00) for filing and recording the articles of incorporation of credit unions, which fee shall be in lieu of other filing fees.

6109.39. Application of act. Nothing contained in this act shall apply to persons or corporations engaged in the business of loaning money under the provisions of the banking, building and loan, and other laws of the state of Montana. This act to apply to and govern only those doing business as credit union associations.

CHAPTER 38

COOPERATIVE ASSOCIATIONS

6375. Incorporation of co-operative associations. Whenever any number of persons, not less than three, nor more than seven, may desire to become incorporated as a co-operative association for the purpose of trade, or of prosecuting any branch of industry, or the purchase and distribution of commodities for consumption, or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands, duly acknowledged by a notary public, in the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, its capital stock, its location, and duration of the association, and the particular branch or branches of industry which they intend to prosecute, which statement shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of five dollars.

6376. Limit on amount of common stock person may hold. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

6377. First meeting. As soon as ten or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting by-laws, and

transacting such other business as shall properly come before them. Notice thereof shall be given by depositing same in the post office, properly addressed, to each subscriber, at least ten days before the time fixed, stating the object, time, and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders, and hold their office for such period of time as shall be provided in the articles of association or by-laws.

6378. Certificate of incorporation. The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the by-laws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office, in and about the organization, and duly authenticated, under his hand and seal of the state, for which he shall receive the sum of five dollars, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located. Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business.

6379. Powers of such associations. Associations formed under this act shall be bodies corporate and politic for the period for which they are organized, not exceeding forty years; may sue and be sued; may have a common seal, which they may alter or renew at pleasure; may own, possess, and enjoy so much real and personal property as shall be necessary for the transaction of their business, and may sell and dispose of the same. They may borrow money and may pledge their property, both real and personal, to secure the payment thereof, and they shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed, and such as are usually exercised by co-operative associations, subject to all duties, restrictions, and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this act.

6380. Board of directors—officers. The officers of the association shall consist of a board of directors, who shall exercise the corporate powers invested in such association, the number of which, not less than three, shall be fixed by the by-laws of the association; a president, a vice-president, secretary, and treasurer, to be elected by the stockholders as provided by the by-laws. All by-laws shall be adopted by the stockholders of the association.

6381. Classes of stock—powers of stockholders of preferred and common stock—forfeiture for non-payment of installments. The shares of stock shall not be less than ten dollars (\$10.00) nor more than five thousand dollars (\$5,000.00) per share, and may be made payable in installments. Every co-operative association may divide its shares of stock into preferred and common stock. The holders of preferred stock shall have no voting power and shall not participate in the management and affairs of

the association, and the owners thereof shall share in the profits of the association to the extent of not exceeding six per cent. (6%) per annum on the par value thereof. The common stock may be divided into classes of different values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares; provided, however, that the owners of said common stock in the different classes shall have the same power and vote in the association. Forfeiture of the stock for non-payment of installments may be provided for in the by-laws and whenever a share of stock is forfeited, such share shall become the property of the association, and may be re-issued to any person already a holder of common stock; but any proceeds received from such re-issue, over and above the amount due on said share, by the association, shall be paid to the delinquent shareholder. The stock heretofore issued in classes of different par values by any co-operative association is hereby legalized and made valid.

6382. Assignment of stock. No assignment of stock shall be made to any person who already owns a share, and in no event except by the consent of a majority of the stockholders, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share, but shall remain jointly liable therefor with the assignee.

6383. Exemptions—shares of decedents. The share, not exceeding the par value of five hundred dollars, of each member shall be exempt from seizure on attachment, or sale under execution, and upon his death shall be sold by the association, and the proceeds, after deducting all liabilities to the association, shall be delivered to his heirs.

6384. Increase of membership. An association licensed to operate under this act may, by a majority of its stockholders, increase its membership in such manner as may be provided in its by-laws, not inconsistent with any of the provisions of this act.

6385. Reserved power of regulation. The legislative assembly hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this act as it may deem advisable; and such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

6386. Stockholders voting by mail. At any regularly called general or special meeting of the stockholders of co-operative associations, a written vote received by mail from any absent stockholder, and signed by him, may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing; provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of the same is forwarded with and attached to the vote so mailed by him.

6387. Disposal of earnings—dividends—reserve fund—educational fund.

The directors of a co-operative association, subject to revision by the stockholders at a general or special meeting may apportion the earnings of the association by first paying dividends on the paid up capital stock, not exceeding six per cent. (6%) per annum on the par value thereof, from the remaining funds, if any, accessible for dividend purposes, not less than five per cent. (5%) of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to thirty per cent. (30%) of the paid up capital stock, and from the balance, if any, five per cent. (5%) for educational fund to be used for teaching co-operation, and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production association such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

6388. Distribution of profits or net earnings—dissolution of association. The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months. If such associations for five consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition, setting forth such fact, may apply to the district court of the county, wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

6389. Benefits of act available to existing associations. All co-operative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all of the provisions of this act, and be bound thereby on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and be bound by the provisions of this act. No association organized under this act shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

6390. Consolidation of co-operative associations. It shall be lawful for two or more co-operative associations formed, or which may be hereafter formed under the laws of the state of Montana, organized and doing business in the same county, to consolidate their capital stock, debts, liabilities, assets, property, and franchises in such manner and upon such terms as may be agreed upon by the board of directors of such associations desiring to consolidate their interests; but no such consolidation shall be made except upon the written request of a majority of the stockholders of each of such

associations. When the directors of the constituent associations shall have agreed upon the terms and manner of consolidation, and name by which the corporation formed by the consolidation shall be known, they shall cause to be published a notice thereof at least once a week for four consecutive weeks in some newspaper published in the county where said consolidation is to be had; said notice shall contain the names of the constituent associations and the manner and terms of such consolidation. The said directors shall also call, within thirty days after such consolidation, a meeting of the stockholders of such constituent associations, upon due notice of the time and place, for the purpose of electing a board of directors for the consolidated association; the number of and the term for which said directors are to be elected shall be determined by the board of directors of the constituent associations.

6391. Terms and certificate of consolidation. Said terms of consolidation must provide that each stockholder in each association consolidating shall be given equal rights and privileges with every other stockholder in the same association. When said consolidation has been completed, a certificate thereof, showing the procedure and terms of said consolidation, and the names of the constituent associations, and the name adopted for the corporation formed by the consolidation, must be filed in the office of the county clerk of the county where said consolidation takes place; the said certificate shall also contain all the facts required by section 6375; said certificate shall be signed and acknowledged by at least a majority of the directors of each of the constituent associations. A copy of said certificate, duly certified by the county clerk and recorder, must also be filed in the office of the secretary of state.

6392. Effect of consolidation. When the foregoing provisions have been complied with, the constituent associations named in said certificate shall be deemed and held to have become extinct, and said new association, under the name adopted, shall be deemed and held to have succeeded to all their several capital stock, properties, assets, contracts, and rights of action, and to be entitled to possess, enjoy, and enforce the same, and every part thereof, as fully and completely as either and every of its constituent associations might have done had no consolidation taken place. Said new association shall also be deemed and held to have become subrogated to its several constituents, and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any person, persons, or corporations whomsoever or whatsoever, and said new association must sue or be sued in its own name in any and every case in which any or either of its constituents might have sued or may have been sued had no such consolidation been made.

6393. Obligation of contracts preserved. Nothing in this act shall be construed to impair the obligation of any contract to which any of such constituents was a party at the date of said consolidation.

6394. Restrictions upon use of terms in corporate or firm name. No association, person, firm, corporation, or co-partnership hereafter organized or doing business in this state shall be entitled to use the term "co-operative," "co-operation," "co-operator" as part of his, their, or its corporate

firm, association, or other business name or title, unless incorporated under and in compliance with the provisions of this chapter; nor shall any corporation incorporated under the co-operative laws use the term "farmer" or "farmers" when less than one-half of its stockholders or members are farmers by occupation.

6395. Duty of secretary of state. The secretary of state shall not issue any certificate of incorporation to any corporation or association except in compliance with this act.

6396. Violation of law a misdemeanor—penalty. Any person, firm, corporation, or association violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars nor more than one thousand dollars.

CHAPTER 39

COOPERATIVE AGRICULTURAL CORPORATIONS

6397. Formation of agricultural corporations or co-operative districts. At any time hereafter, any ten or more holders of title, or evidence of title, to agricultural, horticultural, or farm lands in this state, of an aggregate value of not less than seventy-five thousand dollars, who may desire to form a company, or district, for the purpose of promoting or improving the production, processing, storing, warehousing, marketing, of any or all agricultural, horticultural or farm or dairying products of the respective petitioners therefor, may incorporate themselves into an agricultural corporation, or co-operative agricultural district.

6398. Petition—contents and filing—bond. Such persons must prepare, sign, acknowledge and file a petition with the clerk of the district court of the county in which the lands, or the greater portion of the lands, included in the petition are situate; such petition to state:

1. The name of the corporation, or district, proposed to be formed;
2. The purpose for which it is formed;
3. The place where its principal business is to be transacted;
4. The number of its directors, or trustees, which shall not be less than three, and the names and residences of those who are selected for the first three months, and until their successors are elected and qualified; provided, such directors, or trustees, shall at all times be resident freeholders in the state of Montana;
5. The names and addresses of the petitioners applying for such incorporation, or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district, and the character of the same and their production; also a consent of the owners to submit the lands to the provisions hereof;
6. The assessed valuation of the land;
7. The term for which it is to exist, not exceeding forty years.
8. If shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same, in either value, acreage, or production, shall be stated.
9. Such petition shall be accompanied by a map, giving location of

the lands sought to be included in such corporation, or district; nothing herein to be construed as requiring such lands to be contiguous.

A bond in the sum of one thousand dollars, to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation, or district, shall be filed with the petition.

6399. Notice of hearing of petition. Upon the filing of such petition the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than ten nor more than twenty days from the date of filing such petition, and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon, not less than ten days before such hearing, and post it in three public places in said county.

6400. Hearing of petition—findings of court—issuance certificate in-corporation. At the time specified in the notice of hearing, a district judge of the state of Montana shall, in open court, hear said petition and the evidence offered in support thereof, and determine whether or not the requirements of this act have been complied with. If, upon such hearing, or adjournments thereof, as the court may order, the court does find that the petition substantially complies with the requirements of this act, and is true in all particulars, the court shall so find, and, in open court, shall enter upon its minutes and upon said petition, or attach thereto, its findings and order, to the effect that said petition complies with the requirements of this act and is true and correct in all particulars, as therein set forth, and its statements are supported by proper proof, and that such corporation, or district, is entitled to be created and become a body corporate. A duly certified copy of which petition, with the court's order, or any indorsements thereon, shall be filed with the secretary of state of the state of Montana, who shall, upon such filing, issue a certificate of incorporation under the seal of the state of Montana; duly certified copies of the petition, with the court's order, or indorsements thereon, shall also be filed with the county clerks and recorders of each county in which said corporation, or district, shall thereafter own or hold property or have property-holding memberships. Upon the issuance of such certificate, every corporation, or district, organized hereunder is hereby declared to be a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

6401. Directors to give notice of first meeting. Within thirty days from and after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors, or trustees, for the first three months, shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation, or district, for the purpose of adopting a common seal, adopting by-laws, and providing for the issuance of stock, or other evidences of membership of the members thereof, and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation, or district, formed for the purposes named in the petition.

6402. Procedure for receiving other members. Whenever any corpora-

tion, or district, has been formed under the provisions hereof, it is authorized and directed to permit other holders of title, or evidence of title, of similar or like agricultural, horticultural, or farm lands within this state to become members thereof, upon such holder of title, or evidence of title, in manner and form as may be required by the laws of Montana and the rules of such corporation, or district, or its by-laws, applying for membership therein to the officers thereof by written application, duly acknowledged, containing a full, true and correct description of the lands owned by him and proposed to be contained in said corporation, or district; a statement of his desire to become a member thereof, and his consent to submit his lands to the provisions hereof and to the administration of said corporation, or district, and its by-laws, and to its objects and purposes; and accompanying said application a map of the lands so owned by him and proposed to be submitted to said corporation, or district, its objects and purposes. If said application shall be in proper form, and the applicant be the holder of title, or evidence of title, to the lands described, and the uses of said land as represented in said petition be similar to the uses of lands already included in said corporation, or district, a full, true, and correct copy of his application shall be made and filed in the office of principal place of business of the corporation, or district, and his original application shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands, or the greater portion thereof, are situate, and he shall thereupon be entitled to evidence of temporary membership, in shares or units of membership, in similar manner as original members thereof, and the said lands described in the petition shall thereafter be construed to be a part of said corporation, or district, to all intents and purposes as though originally incorporated therein. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, such new member or stockholder shall be entitled to full membership in such corporation, or district.

6403. Lien of corporate indebtedness upon membership lands. From and after the date of the inclusion of any land or property as a member thereof in any corporation, or district, organized under the provisions hereof, all mortgage or bonded indebtedness thereafter created by such corporation, or district, shall be deemed a first lien upon such membership lands, to the extent of not to exceed five per cent. of the assessed valuation thereof if the same shall be grazing or agricultural, and not to exceed ten per cent. of the assessed valuation thereof if the same shall be horticultural or vegetable producing lands. The recording of the copy of the articles of incorporation, or petition to become a member of such corporation, or district, shall be notice to all subsequent lien claimants that such lands are subject to a first lien of not to exceed the amount specified herein; provided, nothing herein shall be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation, or district, as distinguished from membership lands individually owned, and included therein for the purposes hereof.

6404. Creation of subdivisions or subdistricts. Any corporation, or district, organized under the provisions hereof shall have the power to

create subdivisions, or subdistricts, of said corporation, or district, by geographical or other location, as shall best subserve the purposes of the corporation, or district, or the welfare of the membership of the corporation, or district, residing in the proposed subdivision, or subdistrict; provided, any property owned or acquired by the subdivision, or subdistrict, thus created shall at all times be the property of the corporation, or district, and its members and membership lands subject to the objects, purposes and liabilities of the corporation, or district, as herein provided.

6405. Members and membership lands. The members of a corporation, or district, organized hereunder shall be called "members"; the lands included by such members shall be called "membership lands."

6406. By-laws, adoption of. Every corporation, or district, formed under this chapter, must, by majority action, at its organization meeting after incorporation, adopt a code of by-laws for its government, not inconsistent with the constitution and laws of this state.

6407. By-laws—contents. The by-laws, where no other provision is specially made, may provide for:

1. The time, place, and manner of calling and conducting meetings of stockholders, or members;

2. The number of stockholders, or members, or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;

3. The mode of voting at stockholders' meetings, and the method of voting by proxy; provided, that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;

4. The number of directors of the corporation, or district, and the time of the annual election of directors and the mode and manner of giving notice thereof; the officers, the manner of their election, their duties and tenure;

5. The directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation, or district, or any part thereof, as distinguished from membership lands;

6. The by-laws may also provide for the manner of creating subdivisions, or subdistricts, by geographical location, or otherwise, for local groups or subdivisions of the corporation, or district, as may promote the objects of the corporation, or district, generally or the welfare of the membership in the particular subdivision, or subdistrict; and may provide for local boards of directors, or executive committees, representing the board of directors, to manage the affairs of the subdivision, or subdistrict, thus created, subject to the direction and approval of the board of directors of the corporation, or district.

6408. By-laws, recording and amending. The by-laws shall be recorded, and may be amended as provided in section 5932 of this code.

6409. Board of directors—powers. The corporate, or district, powers, business, and property of all corporations, or districts, formed under the provisions hereof must be exercised, conducted and controlled by a board, which shall never be less than three members; otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the by-laws with reference thereto. The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise

dispose of the corporate assets of the corporation, or district, or any part thereof, as distinguished from membership lands.

6410. Directors, qualifications of—quorum—vacancies. No person shall be eligible to be a director of any corporation, or district, organized under the provisions hereof, who is not himself a member of the corporation, or district, and a resident agricultural freeholder in the state of Montana. A quorum of the board of directors shall at all times be necessary for the transaction of business; provided, if the by-laws or board of directors shall provide for an executive committee, a quorum of such committee shall have authority to carry on business. Whenever a vacancy occurs in the office of a director, unless the by-laws shall otherwise provide, such vacancy may be filled by appointment by the board of directors.

6411. Election of directors. Directors must be elected at the annual meeting, and may hold office for the term and in the manner as specified in the by-laws.

6412. Elections—how conducted—voting. All elections must be by ballot, and every stockholder, or member, or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state and the by-laws of the corporation, or district.

6413. Meetings—how conducted—voting—election of proxies. At the organization meeting or any meeting of the stockholders or members of a corporation, or district, organized under the provisions hereof, each member and each unit of membership in acres, production, or other evidence of membership, shall be entitled to vote in person or by proxy. Corporate action at such meeting shall be determined by a majority of the membership, and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision, or subdistrict, of the corporation, or district, as may be defined and designated by the board of directors, or by-laws, shall, at a subdivision, or subdistrict, meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision, or subdistrict, at any such meeting. Where any subdivision, or subdistrict, fails to elect such delegate, any individual member may give proxy, provided no person shall be entitled to act as proxy who is not himself a member of the corporation, or district, and a resident, agricultural, or horticultural freeholder in the state of Montana for not less than three years immediately preceding such meeting.

6414. Indebtedness—how created—limitations. The board of directors, or other officers of a corporation, or district, organized under the provisions hereof, as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof. When at a meeting of the directors of any corporation, or district, organized hereunder, of which meeting each director shall have received at least five days' written or telegraphic prior notice, it shall be determined to the interests of said corporation, or district, for the promotion of its objects and business to create an indebtedness of said corporation, or district, secured by a first lien or mortgage

upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, and the manner and form of evidencing the same, and any coupons for interest thereon, and authorizing, directing and empowering the executive officers of the corporation, or district, to, upon the approval of the district court, as hereinafter provided for, make, execute and deliver bonds, notes, coupons, or other evidences of the debt, and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

6415. Creation of debt—passage of resolution. Upon the passage of such resolution the executive officers of the corporation, or district, shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation, or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation, or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

6416. Notice of hearing—hearing—order of court. Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than twenty nor more than forty days from the date of filing thereof, and direct personal notice to be given to such members as are within the state of Montana, and by mail to such members without the state; and by publication in some newspaper of general circulation in each of the counties in which membership lands to be affected are situated, for not less than two weeks prior to the hearing of said petition; which notice shall state the name of the corporation, or district, its principal place of business, and the fact that it has applied to a district court (naming and describing the same), for leave to create a bonded indebtedness of the amount prayed for, the maximum rate of interest proposed to be paid thereon, and time of maturity. On the day set for the hearing of the petition the court shall proceed to hear the same, and any objections that may be filed to the granting hereof. If upon said hearing the court shall find (1) that notice has been given as required by this law and the orders of the court, (2) that the matters and things set forth in said petition are true, (3) that the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation, or district, for the carrying on of its business, and that the board of directors have determined that such fund is proper or required for the carrying on of its business, and (4) that the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation, or district, to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition, and the maximum interest to be per-

mitted, and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation, or district, and all of the membership lands in said corporation, or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation, or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation, or district, to the extent authorized by the provisions hereof; provided, if a majority, as provided for in section 6421, shall file written objection to the granting of the petition, the court shall dismiss the proceeding, and no similar proceeding shall be filed within six months thereafter.

6417. Execution and record of mortgage—lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation, or district, shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation, or district, and make, execute, and deliver mortgages and deeds of trust, or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation, or district, or any of the assets of said corporation, or district, are situated, said mortgage shall be and become a first lien upon all the lands of said corporation, or district, and upon all of the membership lands of the individual members as may be included in said corporation, or district, situated in such county, as of the date when such lands became members of such corporation, or district, to the extent of the limitation of indebtedness thereon herein provided for.

6418. Foreclosure of mortgage—procedure—tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages, or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage, or the trustee named in the deed of trust, shall be entitled to proceed to foreclose the same in the manner provided for in the Code of Civil Procedure, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage, or deed of trust, as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated, ordering and directing the county clerks and recorders of such counties to levy and include as part

of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed three years, as the court shall in its order direct.

6419. Withdrawal of lands—procedure. Any person holding title, or evidence of title, to membership lands included in a corporation, or district, organized under the provisions hereof, subsequently desiring to withdraw his lands from such corporation, or district, may do so upon presenting to the board of directors his verified petition stating that he is the holder of title, or evidence of title, to membership lands included therein, particularly describing the same, with a map or plat thereof; that he is desirous of withdrawing from such corporation, or district, and tendering to said board the pro rata amount of liability of his lands for all of the corporation's lawfully created and existing lien liabilities, together with his pro rata amount of interest due and to become due upon any such liabilities to the maturity of the same. If the matters and things set forth in said petition shall be true, and said petitioner shall deposit with the board his pro rata amount of the liabilities as before herein set out, or furnish a receipt for such amount from the mortgage or lienholders, holding liens against such lands, the proper officers of the corporation, or district, shall make, execute, acknowledge, and deliver a release of said lands from incorporation, or district, and its liabilities. Upon presentation of such release to the mortgage or lienholder claiming a right against said membership lands, they shall furnish their release thereof, which said release or releases may be filed and recorded in any county or counties in which said lands may be situated. The board of directors and corporate assets of the corporation shall be responsible to any mortgage or lienholder and the withdrawer for the payments of such funds on their debt or liability.

6420. Withdrawal—application to court for order. In the event the board of directors shall refuse or fail for a period of thirty days to act upon such petition of withdrawal, the petitioner shall be entitled to apply to the district court in the county wherein said lands, or the larger proportion of the same, shall be situated, for an order of withdrawal, and upon his payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against said corporation or its membership lands, of the pro rata amount of his land's liabilities therefor, he shall be entitled to an order of withdrawal and release of his lands from said court. The filing with the clerk and recorder of a duly certified copy of such order permitting withdrawal, shall operate to release the membership lands described therein from any liens of the corporation under the provisions hereof.

6421. Organization of districts by existing associations—procedure. Any co-operative, or other corporation, association, society, or group of individuals now or heretofore associated together for purposes and objects similar to those contemplated by the provisions hereof, desiring to come within the provisions hereof, may by resolution of their board of directors, direct written notice to be given to each stockholder or member of their

corporation or group of individuals, of the proposal to organize a corporation, or district, under the provisions hereof, and request ten or more of their members, qualified as herein provided for, to prepare and file in such county as they shall select to make their principal place of business, a petition in accordance with the provisions of section 6398. If thereafter not less than two-thirds of the stockholders, or members, as such, of such co-operative, or other corporation, association, society, or group of individuals, shall either file with the corporation, or district, their written consent to such reorganization, or petition to become members thereof, in accordance with the provisions hereof, or both, the board of directors, or other governing board of such existing co-operative, or other corporation, association, society, or group of individuals, shall be authorized to, through proper officers, transfer to such new corporation, or district, when organized, their corporate assets, real, personal, and mixed. Any stockholder or member of any co-operative or other corporation or society reorganized under the provisions hereof, consenting to such reorganization but not including lands therein, shall be entitled to a certificate or shares of stock or other evidence of membership in such reorganized corporation, or district, of the par value equal to the value of his certificate or shares of stock or membership right in the previous existing co-operative or other corporation or society's assets at the time of such reorganization, and shall be to this extent a stockholder or member; provided any stockholder or member of the corporation or group of individuals that are reorganizing shall not be considered as increasing the stock of the new corporation, so as to require consent of a majority of its members or stockholders to their admission.

6422. Dissenting stockholders—appraisal value of equity. In the event any stockholder or member of such existing co-operative, or other corporation, association, society, or group of individuals, shall decline to consent to such transfer, or refuse to become a member of such new organization, he must, within thirty days from and after receiving written notice of the transfer of said assets to the new corporation, or district, serve upon officers of the newly created corporation, or district, and file in the district court of the county of its principal place of business, his petition, praying for the net value of his equity as a stockholder, or member, in said co-operative, or other corporation, association, society, or group of individuals, in its assets, determined and valued as of the date when the said property was transferred by the directors, or executive officers, to the new corporation, or district. Upon a failure to, within the time and in the manner specified herein, file such claim for appraisal and settlement, it shall be forever barred.

6423. Errors—effect. Mere error or omission in the description of any lands, or in the names of any of the holders of title, or evidence of title, to lands, shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject-matter, unless such error or omission shall cause substantial injury.

6424. Order of court—appeals. Whenever under the provisions hereof any application is permitted to be made to the district court, or appeal allowed thereto, the action of the district court, upon such application, or appeal, shall be final, unless appealed from in accordance with the Code

of Civil Procedure within sixty days from and after the date of the entry of the order or judgment.

6425. Existing corporate laws applicable. Except as otherwise herein specifically provided, corporations, or districts, organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

6426. Co-operative agricultural associations — ownership of enterprises—powers. Any, either co-operative stock or non-profit non-stock, agricultural association or company already existing or that may be hereafter organized under the laws of Montana, may own and operate two or more co-operative enterprises in different parts of the state, and may exercise and possess the following powers by so providing in their articles of incorporation or in their by-laws:

(a) That all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as “general officers” or “general board of directors.”

(b) Stockholders or members of such co-operative stock or non-profit non-stock agricultural associations or companies shall be grouped into “locals” in such districts as the general board of directors may from time to time direct.

(c) Each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for one year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) Each delegate shall have only one vote, regardless of the number of stockholders or members which he may represent.

6427. Exception. Nothing in this act shall be deemed or construed to limit the powers of the board of directors of any corporation.

CHAPTER 40

COOPERATIVE MARKETING ASSOCIATIONS

6428. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through co-operation and to eliminate speculation and waste; and to make the distribution of agricultural products as directly as can be efficiently done between producer and consumer; to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this act is passed.

6429. Definitions as used in this act.

(a) The term “agricultural products” shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm products;

(b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

(c) The term "association" means any corporation organized under this act; and

(d) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

Associations organized hereunder shall be deemed non-profit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

This act shall be referred to as the "co-operative marketing act."

6430. Who may organize. Five or more persons engaged in the production of agricultural products may form a non-profit co-operative association, with or without capital stock, under the provisions of this act.

6431. Purposes. An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or the financing of the above-enumerated activities; or in any one or more of the activities specified herein.

6432. Preliminary investigation. Every group of persons contemplating the organization of an association under this act is urged to communicate with the dean of the state agricultural college, who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

6433. Powers of associations. Each association incorporated under this act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association shall handle the agricultural products of non-members in greater volume than that of members.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except as are inconsistent with the expressed provisions of this act, and to do any such thing anywhere.

6434. Members. (a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a non-stock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder.

6435. Articles of incorporation. Each association formed under this act must prepare and file articles of incorporation, setting forth:

(a) The name of the association;

(b) The purposes for which it is formed;

(c) The place where its principal business will be transacted;

(d) The term for which it is to exist, not exceeding forty years;

(e) The number of its directors or trustees, which shall not be less than five nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or vote of three-fourths of the members.

(g) The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation

law of this state, and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the dean of the state college of agriculture.

6436. Amendments to articles of incorporation. The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this state.

6437. By-laws. Each association incorporated under this act must, within thirty days after its incorporation, adopt for its government and management a code of by-laws, not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such by-laws. Each association under its by-laws may also provide for any or all of the following matters:

- (a) The time, place and manner of calling and conducting its meetings.
- (b) The number of stockholders or members constituting a quorum.
- (c) The right of members or stockholders to vote by proxy or by mail or by both, and the conditions, manner, form, and effects of such votes.
- (d) The number of directors constituting a quorum.
- (e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.
- (f) Penalties for violations of the by-laws.
- (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- (h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

(i) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and the shares of common stock; the conditions upon which, and the time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member

or stockholder or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal.

6438. General and special meetings—how called. In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time and ten per cent. of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting; provided, however, that the by-laws may require instead that such notice be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

6439. Directors—election—compensation—interest in contracts—vacancies. The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary election should be held in each district to elect the directors apportioned to such districts and the result of all such primary elections must be ratified by the next regular meeting of the association.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district.

When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

6440. Election of officers. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary, and as such shall not be considered as an officer, but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the

treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

6441. Stock—membership certificates—when issued—voting—liability—limitations on transfer and ownership. When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

No stockholder of a co-operative association shall own more than one-twentieth of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock.

No member or stockholder shall be entitled to more than one vote.

The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may at any time, except when the debt of the association exceeds fifty per cent. of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

6442. Removal of officer or director. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent. of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twelve per cent. of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

6443. Referendum. Upon demand of forty per cent. of the entire board of directors any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; provided, however, that a special meeting may be called for the purpose.

6444. Marketing contract. The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses.

The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association, and any such provisions shall be valid and enforceable in the courts of this state.

In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

6445. Report to commissioner of agriculture. Each association formed under this act shall make an annual report to the commissioner of agriculture on forms furnished by him, setting forth the name of such association, its principal place of business; a statement of its business operations during the period covered by such report, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received if a non-stock association; the total expenses of operations; the volume of business transacted; the amount of its indebtedness or liability; and its balance sheets.

6446. Contracts and agreements with other associations. Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or in any other state, for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

6447. Association heretofore organized may adopt the provisions of

this act. Any corporation or association organized under previously existing statutes, may, by a majority vote of its stockholders or members be brought under the provisions of this act by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the corporation commissioners, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this act. Articles of incorporation shall be filed as required in section 6435, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

6448. Constitutionality. If any section of this act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby.

6449. Filing fees. For filing articles of incorporation an association organized hereunder shall pay to the secretary of state, five dollars; and for filing an amendment to the articles, two and 50/100 dollars.

6449.1. Recording marketing agreements. Any co-operative marketing association organized under the laws of this state, or doing business in this state pursuant to the laws of this state, may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

6449.2. Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer, or without any affidavit of good faith or other formality, but shall be signed by the member of the association, and in the name of the association, by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

6449.3. Place for filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

6449.4. Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this act.

6449.5. Transfer of title effected on recording, when—lien not to extend to subsequent product. In case such marketing agreement specifies that the member has agreed to sell, and the association has agreed to buy, the product specified in the agreement, produced by or for such member during a period of time in said agreement designated; and such agreement further provides that the association shall have the absolute title to such product, and the right to enforce specific performance of the agreement, and the power to borrow money thereon for any purpose of the association, and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account, or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby,

and any possession by the member thereafter shall be only as custodian for such association. It is further provided that such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

6449.6. Agreements as security for loans—transfer and assignment. It is further provided that such association shall have full power to transfer and assign all of its rights under such co-operative marketing agreement, containing the provisions specified in the preceding section hereof, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record, or may be made by separate document which shall adequately describe the said marketing agreement, or the various agreements, covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of co-operative agreements. Such assignments need not be acknowledged before a notary public or other officer, nor contain any affidavit of good faith or other formality, but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said co-operative marketing agreements, and the provisions of this act.

6449.7. Fees of county clerk—indexing of recorded agreements. The fees payable to the county clerk and recorder shall be as follows: fifty cents for each agreement so filed for record; fifty cents for each certificate of prior liens and mortgages; fifty cents for certifying to copy of marketing agreement so filed for record; fifty cents for each assignment which is filed separate from the marketing agreement or agreements covered thereby. The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

CHAPTER 41

COLLEGES AND SEMINARIES

6450. How incorporated. Any number of persons who desire to establish a college or seminary of learning may incorporate themselves as provided in this part.

6451. Articles of incorporation—contents. In lieu of the requirements of section 5905 of this code, the articles of incorporation must contain:

1. The name of the corporation;
2. The purposes for which it was organized;
3. The place where the college or seminary is to be conducted;
4. The number of its trustees, which shall not be less than three nor more than thirteen, and the names and residences of the trustees. The term for which the trustees named and their successors are to hold office may also be stated. If it is desired that the trustees or any portion of them shall belong to any organization, society, or church, such limitation shall be stated;

5. The names of those who have subscribed money or property to assist in founding the seminary, or college, together with the amount of money and description of property subscribed.

6452. Board of trustees—term—quorum—powers. Unless otherwise provided in the articles of incorporation, the board of trustees must, as soon as organized, so classify themselves that one-third of their number, as near as possible, must go out of office every year, and thereafter the trustees shall hold office for three years. A majority of the trustees constitute a quorum for the transaction of business, and the office of the corporation must be at the college or seminary.

The trustees have power :

1. To elect, by ballot, annually one of their number as president, and another as secretary; also any person as treasurer of the board;

2. Upon the death, removal out of the state, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place. If such corporation is formed under the patronage or authority of a church organization, the trustees may be elected by the presbytery, conference, convocation, or other ruling body of such church. If formed by a society, then by the members of the society;

3. To elect additional trustees; provided, the whole number elected must never exceed thirteen at any one time;

4. To declare vacant the seat of any trustee who absents himself from eight successive meetings of the board;

5. To receive and hold, by purchase, gift, devise, bequest, or grant, real estate or personal property for educational purposes connected with the corporation, or for the benefit of the institution;

6. To sell, mortgage, lease, contract, and otherwise use and dispose of the property of the corporation in such manner as they shall deem conducive to the prosperity of the corporation;

7. To direct and prescribe the course of study and discipline to be observed in the college or seminary;

8. To appoint a president of the college or seminary, who shall hold his office during the pleasure of the trustees;

9. To appoint such professors, tutors, and other officers as they shall deem necessary, who shall hold their offices during the pleasure of the trustees;

10. To grant such literary honors as are usually granted by any university, college, or seminary of learning in the United States, and in testimony thereof to give suitable diplomas under their seal, and signature of such officers of the corporation and the institution as they may deem expedient;

11. To fix salaries of the president, professors, and other officers and employees of the college or seminary;

12. To make all by-laws and ordinances necessary and proper to carry into effect the preceding powers and necessary to advance the interests of the college or seminary; provided, that no by-law or ordinance shall conflict with the constitution or laws of the United States, or of this state.

CHAPTER 42

RELIGIOUS, SOCIAL AND BENEVOLENT ASSOCIATIONS

6453. Incorporation of churches, charities, benevolent and fraternal societies, and associations. Associations or persons where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of Patrons of Husbandry, benevolent associations, beneficial associations, and all other associations, societies, or orders of like character, and social clubs and agricultural societies, stock-growers' associations, and other associations of like character, including local, independent, and subordinate organizations, as well as state, respectively, supervisory, governing, and grand organizations and bodies of any such associations, society, or order, or for the purpose of establishing public or private charities or both, or for any other lawful purpose, may become incorporated upon complying with the provisions of this chapter.

Sec. 2. All acts or parts of acts in conflict herewith are hereby repealed.

Sec. 3. This act shall take effect and be in full force from and after its passage and approval.

As amended by chapter 88 Laws of 1937.

6454. Resolution authorizing incorporation—form—powers of trustees. It shall be lawful for any such association or persons as provided in the preceding section at any regular meeting thereof, or at a special meeting for that purpose called, to adopt, by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

“Resolved. That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to-wit: (A, B, C, D, etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law.” The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property conjointly, and managing the same conjointly, where pecuniary profit is not the object, they may each, by resolution adopted in the same manner as hereinabove provided in this section, instruct their trustee or director, or trustees or directors respectively, to act in conjunction in incorporating under the provisions of this chapter and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation. In case three or more persons are desirous of forming a corporation under the provisions of this act for charitable or benevolent purposes and where pecuniary profit is not the object, they may by resolution adopted and prescribed by them set forth the purposes and objects of such benevolent corporation designating the number and term of the trustees and authorize

the trustees named in such resolution to file articles of incorporation as provided in this act.

6455. Number of directors—articles of incorporation—powers. The trustees or directors, of whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions, may thereupon make, file, and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state, if such association be a state, representative, supervisory, governing, or grand organization or body, articles of incorporation, and must attach to such articles a copy of the resolution or resolutions provided for in the preceding section, certified to by the president or other presiding officer, and the secretary or other recording officer of such meeting or other meetings. In lieu of the requirements of section 5905, of this code, such articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law, and enforce the same by appropriate penalties, and have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise, or bequest, either real or personal property or both, or carry out the obligations or provisions of any trust imposed by will or deed of trust, or otherwise, where the trust is created for any charitable purpose, public or private, and where the same is not repugnant to any law of this state, or may give away, or otherwise dispose of, any property of any kind for the purposes of dispensing charity either public or private or for any helpful, worthy or lawful object contemplated by the provisions of this act, and may use or dispose of any property of any kind for the purposes only for which such corporation was formed.

6456. By-laws, matters which may be embraced in. Corporations organized for purposes other than profit may, in their by-laws, ordinances, constitutions, or articles of incorporation, in addition to the provisions in the preceding section, provide for:

1. The qualification of members, mode of election, and terms of admission to membership;
2. The fees of admission and dues to be paid into their treasury by members;
3. The number of members that constitutes a quorum at any meeting of the corporation, and an election of officers of the corporation by a meeting so constituted shall be as valid as if there had been a majority of the members present thereat and voting;
4. The expulsion and suspension of members for misconduct or non-payment of dues; also for restoration to membership;

5. Contracting, securing, paying, and limiting the amount of their indebtedness;

6. Other regulations, not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

6457. Incorporation of church or religious societies. The representative body of any church or religious society in this state, such as conference, synod, convocation, convention, or the like, may elect not less than three of its members of such church or religious society as trustees, with authority to form a corporation for holding and administering all trust funds for general or special purposes, or for holding the legal title to real estate for use and in trust for the said church or society, or any congregation or parish thereof, and for conducting and transacting the business affairs of such church or religious society, or any congregation or parish thereof; and any church or religious society may authorize the formation of as many corporations of this character as may be deemed necessary and proper for this purpose. Such persons so appointed as trustees must thereupon make, execute, acknowledge, and file articles of incorporation in the office of the county clerk and recorder of the county wherein such business is to be transacted, and a certified copy thereof in the office of the secretary of the state of Montana. Such articles may contain the statements set forth in section 6455. There must be attached to the articles of incorporation a transcript of the record of their election as such trustees, certified to by the presiding and recording officer of the body by which they are elected, and thereupon such persons and their successors in office shall become a body politic and corporate, and shall have and exercise the powers set forth in the two preceding sections, and such corporation may, also, in its by-laws or articles of incorporation, provide for the number, name, or designation of its officers, their qualifications, duties, terms of office, and manner and time of election or appointment.

6458. Power to mortgage or sell property. Corporations of this character mentioned in this chapter, heretofore organized or that may be hereafter organized, may mortgage or sell real and personal property held by them in such way and through such officers as may be authorized by their constitutions, by-laws, or resolutions.

6459. Religious organizations—incorporation, power, and management of diocesan corporation. Religious corporations partaking, holding, receiving, and disposing of any real or personal property for the use and benefit of any diocese now or hereafter existing of any religious denomination in the state, and for administering the temporalities thereof, and for the further purposes, and with the powers hereinafter specified, may be created in the manner and with the powers, privileges, and franchises herein stated, to-wit:

The bishop of any diocese in which any such corporation is to be located may associate with himself the vicar-general and chancellor of such diocese, if such dignitaries or officers there be in his denomination, and if not, then such dignitaries or officers as may be next in order to him, according to the rules or organization of his denomination, and two in number, and in any such case these three, or a majority of them, may designate and associate with themselves, or may cause to be selected, in accordance

with the rules of any such denominations to which they may belong, two other members of the same religious denomination, and residents of such diocese, and upon adopting, signing, and acknowledging, in duplicate, a certificate, or articles of incorporation, reciting the facts of the association, and of the selection and designation of such two additional persons, and containing the same general purpose, and place of location of such corporation, and filing of one of said duplicates in the office of the county clerk and recorder of the county in which the place of location of such corporation is to be situated, and the other in the office of the secretary of state of this state; the said five persons and their successors in office shall become a corporation, with power to take, hold, receive, and dispose of any real or personal property, or both, for the use and benefit of such diocese, and for the use and benefit of the religious denomination therein, constituting such diocese, and to administer the temporalities of such diocese, and to establish and conduct schools, seminaries, colleges, and any benevolent, charitable, religious, or missionary work, or society or such religious denominations within such diocese, with all the powers and privileges of religious corporations, and shall be capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant, or otherwise, of and to any property, real or personal, and shall have power to mortgage, sell, and convey the same, or any part thereof, and may adopt and establish by-laws, and make all rules and regulations deemed by them necessary or expedient for the management of its affairs in accordance with law. The persons who may hold the office respectively of bishop, vicar-general, and chancellor in such denomination, within and for such diocese, and their successors in office, or the two persons who may hold offices next in rank to that of bishop in any denomination, not having offices or dignitaries designated by name as vicar-general or chancellor, shall, by virtue of their respective offices, always be members of such corporation, but on ceasing to hold such office, the corporate membership of each shall at once cease; the term of office of such two persons selected and designated as aforesaid, in addition to the bishop, and two other officers or dignitaries, shall be two years from the time of their appointment, and until their respective successors are chosen, and have accepted such office. The successors, respectively, of such two persons so selected by the said bishop, vicar-general, and chancellor, and so signing such articles of incorporation, or corporators, shall, unless otherwise provided in the articles of incorporation, always be chosen by the said other three corporators, namely, the bishop, vicar-general, and chancellor, or by any two of them in the case of any denomination having dignitaries designated by these names, and whenever a vacancy shall occur in such membership as to any such corporator so selected, and as often as any such vacancy shall, for any cause, occur, whether by expiration of term, by resignation, death, or otherwise, the aforesaid three official corporators shall have power to fill such vacancy; provided, however, that in any denomination having a bishop, but not having a vicar-general or chancellor, by such name designated, then these powers shall be exercised by the bishop, and the other official corporators, or any two of them. Every such appointment shall be in writing and entered of record in the minutes of the corporation, and such appointees shall be

members of such religious denomination, and residents of the diocese in which the corporation is located. Any corporator so selected may at any time resign, and thereby cease to be a member of such corporation. Such resignation and its acceptance shall be entered on the minutes of said corporation. In case of vacancy in the office of bishop, or of a temporary suspension of his powers to act, the administrator of the diocese, or such other person as may be appointed, according to the rules of the particular denomination, to preside over and administer the spiritual and temporal affairs of the diocese during such vacancy, or suspension of powers of the bishop, and while he is such administrator or appointee shall be a member of said corporation with all the powers of such corporator that are by this act vested in such bishop, and may act in his place and stead, but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such bishop shall be no longer incapacitated to act by reason of such suspension of his authority. Any member of such corporation may, by writing signed by him, appoint a proxy to represent and act for him, and in his name and stead to vote at any meeting of such corporation.

6460. Formation and powers of parish or local religious corporations.

Whenever, and as often as it may be deemed advisable, or desired by the bishop of any religious denomination within the state of Montana, to have created or organized any parish or local religious corporation within the state for the purpose, and with the powers hereinafter specified, he may associate with himself the vicar-general of the same diocese, if there be such a dignitary or officer in such denomination, or if not, then the dignitary or officer next in rank to the bishop in said diocese, and the pastor or rector or dignitary performing the function of a pastor or rector in the particular denomination, and of the parish or local congregation wherein any such corporation is to be located, and which shall be within the diocese of such bishop, and the said bishop, vicar-general, and pastor or rector shall select, designate, and associate with themselves two lay members of such denomination within the parish, or other subdivision, under the care of such pastor or rector, and the said five persons upon adopting, and signing, and acknowledging in duplicate, a certificate or articles of incorporation, reciting the fact of the association, and of the selection of such laymen as aforesaid, and containing the name, general purpose, and place of location of such corporation, and having one of said certificates, or articles, recorded in the office of the county clerk and recorder of the county in which such parish or congregation is located, and the other in the office of the secretary of state of this state, and said five persons shall become a corporation, and be invested with all the rights, powers, and privileges of a religious corporation, and they, and their successors in office, in such corporation, to-wit, the said corporation, shall be capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant, or otherwise, of and to any property, real or personal, or both, and shall have power to mortgage, sell, or convey the same, or any part thereof, subject always to the rules of the denomination to which such corporators may belong, and may adopt and establish by-laws, and make all rules and regulations necessary or expedient for the management of its affairs. The persons at any time holding the offices hereinbefore speci-

fied in the denomination, and in the diocese in which such corporation is located, together with the pastor or rector, or other person in charge of such denomination in the parish, or congregation, where such corporation is located, and the successor in office of each one of said officers with such diocese, parish, or congregation shall, by virtue of his respective office, be a member of and with the two laymen selected and appointed, as aforesaid, shall constitute such corporation. But no person shall have authority to subscribe such articles as bishop, vicar-general, pastor, or rector, or other official capacity, unless such person is at the time in the occupancy of the particular office, and recognized as such by the proper authority of his denomination, and every such person, on ceasing to hold such office in his denomination, shall thereupon cease to be a member of the corporation, and his successor in office shall become entitled to his place in such corporation. The two laymen, or their successors, shall constitute the other members of said corporation. The term of office of each of the two laymen hereinbefore mentioned, and to be designated as aforesaid, shall be two years from the date of the certificate or articles, and thereafter the term of each of the lay members shall be two years from the corresponding date in subsequent years, and until his successor shall have been appointed, and shall have accepted the office. The laymen thus to serve as corporators, or members of such corporation, shall, unless otherwise provided in the articles of incorporation, always be chosen by said other three corporators, to-wit, by the said official corporators, or any two of them, and the said last-named corporators, or any two of them, shall have power at all times, whenever a vacancy shall occur in the membership as to either of said lay corporators, and as often as any such vacancy may for any cause occur, have power to fill such vacancy. Every such appointment shall be in writing and entered of record in the minutes of the corporation. Any lay corporator may resign his office as corporator, and thereby cease to be a member of such corporation. His resignation shall always be entered on the minutes of said corporation. Should there be, at any time, a vacancy in the office of the bishop belonging to any such corporation, or if there be at any time a person other than the bishop appointed in his stead to administer the spiritual and temporal affairs of said diocese, then during the time of such vacancy or such suspension of the authority of the bishop, the administrator of the diocese of the said bishop, or such other person as may be appointed according to the rules of his denomination to preside over and administer the spiritual and temporal affairs of such diocese, shall, while he is such administrator or appointee, be a member of such corporation, with all the powers of such corporator, that are by this act vested in such bishop, and may act in his place and stead in such corporation, but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such suspension of authority or incapacity to act shall be removed, or shall cease. If any diocese now existing, or hereafter created within any such corporation belonging to such denomination, shall be at any time subdivided according to the rules and practices of such denomination, and one or more new dioceses be formed therefrom, or from parts thereof, the bishop and vicar-general, or the dignitary next in rank to the bishop of such new diocese, and their successors in office, shall also appoint and institute, and

by virtue of their respective offices forthwith become members of any such corporation within such new diocese, with all the rights, duties, privileges, powers, and obligations of such members. And the bishop and vicar-general, or dignitary next in rank to the bishop of the diocese in which such corporation or corporations may be or were located, prior to such subdivision, shall henceforth cease to be members of such corporation, and all of the provisions of this section shall apply and continue to apply to any such new diocese, and to any such corporation or corporations therein located, with the same force and effect as in the old diocese.

6461. Repeal or modification of existing laws. Nothing herein contained shall be construed as repealing or modifying any existing provision of law regarding religious corporations, and the provisions of this act shall be deemed additional and alternative provisions.

CHAPTER 43

RELIGIOUS CORPORATIONS—SOLE

6462. When corporations sole may be created. Whenever the rules, regulations, or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of, or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a sole corporation in the manner herein prescribed.

6463. Articles of incorporation. Such bishop, chief priest, or presiding elder shall file in the office of the secretary of state articles of incorporation, which articles shall set forth the name of such religious denomination, society, or church, and the name of such sole corporations, and designate the territory over which he presides, or over which his jurisdiction extends, and the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules, regulations, or discipline of such religious denomination, society, or church, shall be filed, which statement shall be verified by affidavit; and he shall also file proof of his appointment or election as such bishop, chief priest, or presiding elder, and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record in the office of the secretary of state the original, or a copy of his commission, or certificate, or letters of election, or appointment, duly attested.

6464. Certificate of incorporation. Upon filing the articles of incorporation in the office of the secretary of state, with the proof of the appointment or election of such bishop, chief priest, or presiding elder, the secretary must issue to the corporation, over the great seal of the state, a certificate that the articles of incorporation, containing the required statement of facts, and the proof of the appointment or election of such bishop, chief priest, or presiding elder, has been filed in his office, and thereupon

such bishop, chief priest, or presiding elder shall become, and he and his successors in office shall be a sole corporation.

6465. Powers of corporation sole. Every sole corporation, organized under the provisions of this act, for the purpose of the trust hereinafter mentioned, shall have power to contract in the same manner, and to the same extent, as a natural person, and may sue and be sued, and may defend in all courts, in all matters and proceedings whatever, and shall have authority to borrow money, and to give promissory notes therefor, and to secure the payment thereof by mortgage or other lien upon property, real or personal; to buy, sell, lease, and in every way deal in real or personal property, in the same manner that a natural person may, for the use, purpose, benefit, and behoof of such religious denomination, society, or church, and without the order of any court; and to receive bequests and devises for its own use, or upon trust, and to the same extent that a natural person may, and to appoint attorneys in fact, and to adopt and use a corporate seal; provided, however, that all property held by or in the name of such sole corporation shall be in trust for the use, purpose, benefit, and behoof of such religious denomination, society, or church, for which and in whose behalf such sole corporation is organized.

6466. Succession. In the event of the death or resignation from office of any such bishop, chief priest, or presiding elder, or of his removal therefrom by the person or body having the authority to remove him, his successor in office shall be vested with the title to the property, with like power and authority over the same, and subject to all the legal liabilities and obligations with reference thereto. Such successor shall file in the office of the county clerk and recorder of each county wherein any of said property is situated a certified copy of the proof of his appointment or election, required by section 6463 to be filed with the secretary of state, accompanied by an instrument in writing containing a description of the property situated in such county, and a declaration that the same is owned and held by him by virtue of his succession to said office, which declaration shall be signed and acknowledged by him before some officer authorized to take acknowledgments. Said certificate and statement shall constitute a muniment of title to said property, and the same, or a copy thereof duly certified by the clerk and recorder of the county wherein the same is filed, shall be competent evidence thereof in any action or proceeding concerning the same.

6467. Amendment of articles. Whenever any bishop, chief priest, or presiding elder shall have filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled, "An act authorizing and regulating the incorporation of sole corporations, and defining their powers," approved February 27, 1899, and there shall be any change made in the boundaries of the territory over which he, or his successor, presides, or over which his or his successor's jurisdiction extends, or whenever, for other reasons, it is deemed necessary, such bishop, chief priest, or presiding elder, or his successor in office, may file in the office of the secretary of state amended articles of incorporation, which articles shall set forth the date of filing the original articles of incorporation, the name of such religious denomination, society, or church, and the name of

such sole corporation, and designate the territory over which he presides, or over which his jurisdiction extends, and the facts authorizing such incorporation, and declare the manner in which any vacancy, occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules and regulations or discipline of such religious denomination, society, or church, shall be filled, and shall also file the original, or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed a sufficient attestation thereof.

6468. Certificate of amended articles. Upon filing the amended articles of incorporation in the office of the secretary of state, with the certificate or copy of appointment, mentioned in the preceding section, the secretary shall issue to such corporation, over the great seal of the state, an amended certificate of incorporation, setting forth therein the date of filing the original articles, and the date of filing the amended articles of incorporation, and that said amended articles of incorporation, containing the required statement of facts, and proof of the appointment or election of such bishop, chief priest, or presiding elder, as provided in the preceding section, have been filed in his office. And the said bishop, chief priest, or presiding elder shall continue to be, and be, and his successor in office shall be a sole corporation, under the original articles and amended articles of incorporation filed.

CHAPTER 44

CEMETERY ASSOCIATIONS

6469. Formation of association—trustees. Any number of persons residing in any county in the state of Montana, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they, or a majority of them, agree upon, and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting, and may proceed to form an association, by agreeing upon a corporate name by which the association shall be known, and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three, nor more than nine; and thereupon they may proceed to elect, by ballot, the number of trustees so determined upon.

6470. Classification of trustees. The chairman and secretary of such meeting shall, immediately after such election, divide the trustees by lot into three classes; those in the first class to hold their office for one year; those in the second class, two years; and those in the third class, three years; but the trustees of each class may be re-elected if they possess the qualifications hereinafter mentioned. Such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

6471. Articles of incorporation. The chairman and secretary of such

meeting shall, within five days after the holding of the same, make a written certificate, which shall state the names of the associates who attended such meeting, the corporate name of the association determined upon by a majority of the persons who met, the number of persons fixed upon to manage the concerns of the association, the names of the trustees chosen at the meeting and their classification, the day of the year fixed upon for the annual election of trustees, and the manner of their election. Such certificate shall be signed by the said chairman and secretary, and acknowledged by them before some person authorized to take acknowledgments within the state of Montana, and they shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

6472. Effect of filing certificate—powers of corporation—eminent domain. Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated, and shall have the general powers and privileges of corporations, with the right to sue and be sued, and to continue perpetually, and in addition thereto such corporations shall have the right and power to take private property for public use, to be used exclusively for a cemetery or place of burial of the dead.

Such power of eminent domain to be exercised under the provisions of sections 9933 to 9958, inclusive, of the Code of Civil Procedure.

6473. Trustees may enact by-laws. The trustees of any association incorporated agreeably to the provisions of this act may enact by-laws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

6474. Vacancies in membership. All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this act shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees, and be eligible to the office of trustee of said incorporation, and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

6475. Powers and duties of trustees—officers. The affairs and property of such association shall be managed by the trustees, a majority of whom shall form a board for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer, who shall hold their offices during the pleasure of the board of trustees; and the trustees may require the treasurer to give security for the faithful performance of the duties of his office.

6476. Secretary. The secretary shall perform all the duties of a secretary of a corporation, and shall, in addition, keep a record of interments, in which he shall enter, as correctly and carefully as may be, the name, age, sex, nativity, and cause of death, with date of burial of every person

interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased, or undertaker, as give order for such interment, at the time thereof, or, in case deceased is a pauper, a stranger, or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

6477. Register of interments. Such register or record of interment shall be open to the inspection of the public; and the secretary of every cemetery association shall furnish to the health officers of any corporate town, or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

6478. Penalty for failure to keep register. Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense, not exceeding twenty-five dollars.

6479. May take land by purchase or gift—use of personal property gifts. Any association incorporated agreeably to the provisions of this act may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding one hundred and sixty acres of land, to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys, and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor. Such association may also take by gift and hold personal property, and may sell the same and apply the proceeds thereof to the care, maintenance, and embellishment of said cemetery, but for no other purpose, and all real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association, shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor.

6480. Conveyance of land. After such map is filed in the office of the county clerk and recorder, as aforesaid, the trustees may sell and convey the lots as designated on such map, upon terms, and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the said trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes, and no other, and shall be in the corporate name of the association, signed by the president and secretary thereof.

6481. Annual election. The annual election for trustees, to supply the place of those whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for three years, and until others are chosen to succeed them. Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association, or, if there is more

than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot, or any person who is named as an associate in said certificate, may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

6482. Qualifications of trustees—notice of election. In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation, or their successors; and the said trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected. Public notice of every annual election shall be given in such manner as the by-laws of the association prescribe.

6483. Trustees may fix day for election. If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place, at which time the election may be held with like effect as if holden on the day fixed in said certificate; and the terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the said certificate of incorporation.

6484. Annual report. The trustees at each annual meeting shall make a report in writing, containing a statement of their doings and of the affairs of the association, and an account of the receipts and expenditures during the year preceding.

6485. Funds—to what purposes to be applied. The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in the purchase of cemetery grounds and property; in fencing, improving, and embellishing such grounds and avenues leading thereto; the erection, conduct, repair, or preservation of any structure to be used as a crematory, or the creation, maintenance, and operation of a department for the interment of the dead, and in defraying the necessary expenses in the management and care thereof, and for no other purposes.

6486. Exemption from taxation and execution. The cemetery lands and property of any association formed pursuant to this act are exempt from all public taxes and assessments, and not liable to be sold on execution, or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives, may hold the same exempt therefrom, so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery, or any part of the lands held by such association, for the purpose aforesaid, without the consent of the trustees of such association.

6487. Transfer of lots. Whenever the lands of any such association are laid out in lots, and such lots or any of them are transferred to individual proprietors, and after there has been an interment in any lot so transferred, such lot from the time of such interment shall forever thereafter be inalienable, and shall, upon the death of the proprietor, descend to the heirs of such proprietor, forever; but any one or more of such heirs

may release to any other of the said heirs his or their interest in the same; a copy of such release shall be filed with the secretary of said association, or with the county clerk and recorder of the county within which said lot shall be situated. The body of any deceased person shall not be interred in such lot unless it is the body of a person having, at the time of such decease, an interest in such lot, or of a relative of some person having such interest, or the wife of such person, or the husband of such person, or the relative of such husband or wife, except by consent of all persons having an interest in such lot; provided, that the person or persons who shall be invested with the title to any such lot or lots, or part thereof, may, at any time, sell, convey, and release any such lots or parts thereof to the cemetery association maintaining the cemetery in which such lots are situated; a copy of the instruments of such conveyance to be filed as above provided in case of releases from one heir to another. And such cemetery association shall have power to use any funds under its control for such purposes, and shall hold and shall have power to convey any such lots or parts thereof to other purchasers, in the same manner and with the same effect as it holds and can convey any other of its cemetery lots. But this proviso shall not allow or authorize the conveyance by persons invested with the title thereto, to such association, of any piece of ground in which the body of any deceased person theretofore there lawfully interred shall actually remain interred at the time of such attempted conveyance.

6488. Permanent improvement fund. Any association formed under the provisions of this act, or any corporation heretofore formed under the laws of this state, which shall have established and be maintaining a cemetery, shall provide, in the manner set forth in this chapter, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

6489. Trustees of funds to be appointed by district court. Whenever moneys to the amount of one hundred dollars shall have been received by such corporation, or association, heretofore or hereafter formed, such a fund, either from the sales of lots or from direct payments of such corporation or association towards such a fund by lot owners, or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a board of trustees of such fund, and the judge of such court shall thereupon appoint said board of trustees from a list submitted to him by the trustees of such association. Such board shall consist of not less than three or more than five persons, the exact number to rest in the discretion of the said trustees of said association. Such trustees of such fund must be citizens and freeholders of the state of Montana, during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification, as hereinafter provided, of the said trustee of such fund, all the title to the funds included in said trust, and all the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining, shall at once vest in them; or, in case of the failure of any of those so chosen and appointed, to qualify

within thirty days after their appointment, then the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, then a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund, heretofore appointed by such cemetery associations, or district courts, shall continue to hold their office as such trustees until terminated in one of the manners in this act provided.

6490. Tenure of office of trustees. The tenure of office of trustees of such fund shall be for life unless they permanently remove from the state of Montana, or are removed from office by the judge of said district court for a good cause shown, or their tenure is otherwise terminated as in this act provided.

6491. Bond of trustees. Before exercising, or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained a bond in a sum not less than five thousand dollars, and at least equal to one-third the amount of the fund at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given, and until such trustee shall give a new bond as hereinafter provided. Upon the first day of July in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists, or some part thereof shall be situate, and shall be filed with the treasurer of such cemetery association. Any failure so to renew bonds within thirty days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee, within the discretion of competent jurisdiction, upon application of any person interested.

6492. Vacancies, how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies, in the same manner as above provided in the case of an original vacancy.

6493. Powers of survivors. In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever, existing in such trustee at the time of such death, resignation, disability, or removal, shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification,

succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

6494. Title to funds vest in court until appointment of trustees—application by persons other than trustees of association—accounting. In the case of the failure of the trustees of such association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in section 6489, or in case of the death, removal, resignation, or disability of all the members of such board, the said rights, titles, interest, authority, powers, franchise, and trusts, until the appointment and qualification of a new board of trustees of such fund shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated. In such cases such board of trustees of such fund shall be appointed by the district court of said county on application of any person interested, on notice to such other persons interested as the judge of said court may order. The trustees appointed by the judge of said court, under the provisions of this section, shall have the same rights, powers, authorities and franchise as trustees appointed under other sections of this act. The district court shall have power to compel an accounting of such fund and its income from the cemetery association or the trustees of said fund, upon the application of any interested party. Any owner of an interest in any lot of the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the said trust fund, shall have the right to make any application to the court provided for in this chapter.

6495. Recording appointments of trustees. All instruments of appointment of trustees of such funds shall be recorded with the secretary of the association establishing the fund.

6496. Transfer of funds. From and after the passage and approval of this act, the trustees of such cemetery association as are mentioned in section 6488 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such “permanent care and improvement fund,” of not less than fifteen nor more than forty per cent. of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July, and October of each year, to the trustees of such fund. If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may, by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such “permanent care and improvement fund”; provided, that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots) shall never in any case be allowed to exceed the sum of five thousand dollars per acre of the cemetery to be cared for therewith; and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

6497. Principal of fund to be reserved. The principal of such fund

shall in all cases remain intact and inviolate. But the trustees of such fund shall, on the first of January and first of July in each year, turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

6498. Use of income of fund. The income of that portion of such fund, received from the sales of lots, shall be used, in the discretion of the trustees of such association, solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes, for one year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer, and become a part of the principal. Hereafter all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor, to be transferred under the provisions of this chapter to the "permanent care and improvement fund" of such corporation, and also such further sum, if any there be, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed, so to be transferred as hereinbefore provided.

6499. Investment of fund. The principal of such fund may be invested in the way in which trust funds are permitted to be invested in the state of Montana, and not otherwise.

6500. Compensation of trustees. The members of the board of trustees of such permanent care and improvement fund shall each receive per diem compensation of five dollars for each day actually employed in the duties of such trust, but no trustee shall receive more than one hundred dollars as such compensation in any one year. The fees of such members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach one hundred thousand dollars, and thereafter the same shall be paid out of the income of such fund.

6501. Secretary of board. The secretary of the cemetery association shall act as secretary of the board of trustees of such fund, and shall keep a full record of their proceedings.

6502. Annual report. The trustees of such fund shall annually, on the first day of January, make their report of the condition of such trust fund to the trustees of the cemetery association. Such report shall always be kept by the secretary of such association, and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

CHAPTER 52

TELEGRAPH, TELEPHONE AND ELECTRIC POWER COMPANIES

6645. Rights-of-way for pole lines along streets, roads, and highways. A telegraph, telephone, electric light, or electric power line, corporation, or a person owning or operating such, is hereby authorized to install its respective plants and appliances necessary for service, and to supply and distribute electricity for lighting, heating, power, and other purposes, and to that end to construct such telegraph, telephone, electric light, or electric power line or power lines, from point to point, along and upon any of the public roads, streets, and highways in the state of Montana, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways, and nothing herein shall be so construed as to restrict the powers of city or town councils.

6646. Construction and connection. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines, and in case such persons or corporations cannot agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under the Code of Civil Procedure, and the damages assessed and the right of connection granted as provided in the Code of Civil Procedure.

6647. Consolidation of competing lines forbidden. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph or telephone.

CHAPTER 53**MINING CORPORATIONS**

6648. Transfer agencies. Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States for the transfer and issuing of its stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation.

6649. Stock issued at transfer agencies. All stock of any such corporation issued at a transfer agency must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be

issued at a transfer agency, unless the certificate of stock in lieu of which the same is issued is at the time surrendered for cancellation.

6650. Consolidation of mining corporations. It is lawful for two or more corporations formed under the laws of Montana territory, or of the state, or that may hereafter be formed under the laws of this state for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors of such corporations so desiring to consolidate their interests; but no such consolidation must take place without the consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation relieves such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county and state where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporations shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, must be filed in the office of the county clerk of the county in which the original articles of incorporation of any of said corporations are filed, and a copy thereof filed in the office of the secretary of state. Such certificate must be signed by a majority of each board of directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of directors for the consolidated corporation for the year next ensuing. The said certificate must also contain all the requirements prescribed by section 5905 of this code. This section applies to all corporations formed under the laws of this state or territory of Montana, whether formed under this code or prior thereto.

CHAPTER 54

FOREIGN CORPORATIONS

6651. Foreign corporations—requirements to do business in state. All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any state, or of the United States, or of any foreign government, shall before doing business within this state, file in the office of the secretary of state of Montana, a duly certified copy of their charter, or articles of incorporation, and also a statement, verified by oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing:

1. The name of such corporation and the location of its principal office or place of business without this state, and the location of the place of business or principal office within this state.

2. The names and residences of the officers, trustees, or directors.
3. The amount of capital stock.
4. The amount of capital invested in the state of Montana.

A copy of such charter or articles of incorporation, and such statement, duly certified by said secretary of state, shall be filed in the office of the county clerk of the county wherein its principal office or place of business in this state will be located. Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company.

In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing business in this state, or of increasing its capital stock, or of continuing its corporate existence, it must, within thirty (30) days after the same is adopted by the corporation, file a duly certified copy of such amendment or alteration or certificate of increase of capital stock, or of continuance of corporate existence in the office of the secretary of state, and a copy thereof certified by said secretary of state in the office of the county clerk of the county where its principal office or place of business within this state is located; and whenever any such corporation increases its capital stock or continues its corporate existence, it shall pay to the secretary of state at the time of filing in his office the duly certified copy of the certificate thereof, the same fee that is required by law for filing certificates of increase of capital stock or certificates of continuance of corporate existence. Any such corporation failing, neglecting, or refusing to file such duly certified copies of all alterations, or amendments, of its charter or articles of incorporation, and of all certificates of increase of capital stock or continuance of corporate existence, or refusing to comply with any and all the laws of Montana relating to the payment of fees or licenses, shall forfeit its right to do business in this state and shall be subject to all the penalties, liabilities, and restrictions imposed by law upon foreign corporations for doing business in this state without filing duly certified copies of their charters, or articles of incorporation, in the manner required by law; provided, however, that any foreign corporation now doing business in this state and which has filed a duly certified copy or a duly authenticated copy of its charter or articles of incorporation and also the verified statement and the certificate required by this section and has paid to the secretary of state all fees that are required by law, and any corporation which has altered or amended its charter or articles of incorporation or increased its capital stock, or continued its corporate existence since first filing a duly authenticated or a duly certified copy of its charter or articles of

incorporation with the secretary of state, and which has heretofore filed a duly authenticated or a duly certified copy of such alterations, amendments, or certificates of increase or continuance, in the office of the secretary of state and in the office of the county clerk of the county where it has its principal office or place of business in this state and has paid to the secretary of state all fees that are required by law, shall be deemed to have fully complied with the requirements of this act and any defects in such filing shall be deemed to be corrected hereby, and such corporation is duly and validly qualified as a foreign corporation and is authorized to engage in business in the state of Montana, and such corporation is exempt from any penalties to which it may have been subject under the provisions of this act prior to this amendment.

Sec. 2. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 3. This act shall be in full force and effect from and after its passage and approval.

Approved February 18, 1937.

As amended by chapter 31 Laws of 1937.

6652. Consent of agent. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

6653. Contracts void if made before compliance with act. If any foreign corporation shall attempt or commence to do business in this state without having first filed said statement, certificate, and consent, required by this act, or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by such corporation, or any agent or agents thereof, during said time, shall be enforceable by the corporation until the foregoing provisions have been complied with.

6654. Annual statement. Every corporation enumerated in section 6651 of this code shall annually and within two months from the first day of April of each year make a report, which shall be in the same form and shall contain the same information as required in the statements mentioned in said section, and, in addition, shall contain the following information:

1. The gross amount of its business in the state of Montana for the preceding year.

2. The amount of money actually expended in transacting its business in the state of Montana for the preceding year.

3. The net profits on its business transacted in Montana for the preceding year.

Said report shall be filed in the office of the county clerk of the county wherein the principal business of such corporation is carried on and the duplicate thereof in the office of secretary of state.

6655. Violation of law a misdemeanor. Every foreign corporation doing business in this state, contrary to the provisions of this act, is guilty of a misdemeanor.

6656. Penalty for acting as agent. Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

6657. Corporations engaged in business at time of passage of act. Any foreign corporation or joint-stock company now engaged in carrying on business in Montana, which has heretofore filed a copy of its charter or articles of incorporation, a statement, certificate designating an agent upon whom service of summons and other process may be made, and the consent of such agent, in compliance with the provisions of title XI, part IV, division I of the Civil Code of Montana (sections 6651 to 6658 of this code), shall not be required to comply with the provision of sections 6651 and 6652 of this code; provided, that if the agent designated and appointed by such corporation or joint-stock company does not now reside in this state, or has resigned, or his appointment has been revoked, or if he shall hereafter reside out of the state, or resign, or his appointment be revoked, such corporation or joint-stock company shall be required to designate another agent and file such designation and the consent of such agent in accordance with the provisions of this act.

6658. Foreign corporations may exercise power of eminent domain. Any corporation, organized under the laws of any state of the United States, or the laws of the United States, and authorized to engage in business in this state, and engaged in business in this state, may acquire real property as provided in the Code of Civil Procedure, sections 9933 to 9958, to the same extent, for the same purposes, and in the same manner as corporations organized under the laws of this state.

6659. Liabilities, restrictions, and powers. All foreign corporations licensed to do business in the state of Montana shall be subject to all the liabilities, restrictions, and duties which are or may be imposed upon corporations of like character organized under the laws of this state, and shall have no other or greater powers.

6660. Jurisdiction over foreign corporations and joint-stock companies. All foreign corporations or joint-stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any other state or territory of the United States, or of the United States, or of any foreign government, and doing business in this state, or, which may hereafter engage in business in this state, shall be deemed and taken to be corporations of this state for purposes of jurisdiction, and shall be subject to the jurisdiction of the courts of this state, and may sue and be sued therein in the mode and manner that is or may be by law directed in the case of corporations created or organized under the laws of this state.

6661. Shares of stock subject to attachment. The stocks or shares of such foreign corporations and joint-stock companies, doing business in this state, shall be subject to attachment in the same manner as now provided by law in the case of domestic corporations.

6661.1. Withdrawal of foreign corporation from state. A foreign corporation having authority under sections 6651 and 6652 to do business in this state, may surrender such authority by filing in the office of the secretary of state, a certificate under its corporate seal and the signature of its president, vice-president, or other acting head, setting forth:

1. The name of the corporation and the state under whose laws it is incorporated.

2. The date on which it received authority to do business in this state.

3. Revoking its designation of the person upon whom process against the corporation may be served in this state.

4. That it surrenders its authority to do business in this state and that, as evidence of such surrender, it returns to the secretary of state, for cancellation, the certificate issued by the secretary of state; provided that if such certificate has been lost or destroyed, affidavit as hereinafter provided shall be filed in lieu of such original certificate.

5. That it agrees that service thereafter may be made upon the corporation in any suit based upon contracts or torts or causes of action arising in the state of Montana during the time the corporation was authorized to transact business in this state, by serving the secretary of state, who for that purpose is hereby made the agent of the corporation.

Proof of execution in the form prescribed by section 6915 shall be attached. The certificate of authority shall be attached to the certificate of surrender, unless such certificate of authority has been lost or destroyed, in which event, there shall be attached an affidavit of the president, vice-president, secretary, or other officer of the corporation, to the effect that such certificate has been lost or destroyed, as the case may be. On the filing of such certificate, the secretary of state shall make a note of the filing thereof on his index of corporations and thereupon the authority of the corporation to do business within this state shall cease and terminate, and no such corporation doing business in this state after the filing of such certificate of surrender of authority shall maintain any action in this state upon any contract made by it in this state subsequent to the filing of such certificate of surrender of authority. The filing of such certificate shall not, however, affect any action pending at the time of such surrender, or affect any action in the state upon any contract as to it or cause of action arising, in this state before the filing of the certificate of surrender of authority.

6662. Filing fees of foreign corporations. The filing fees of foreign corporations are enumerated in section 145.1 of the Political Code.

CHAPTER 73

FORM OF ACKNOWLEDGMENT BY CORPORATION

6915. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF..... }
County of..... } ss.

On this.....day of....., in the year
....., before me (here insert the name and quality
of the officer), personally appeared.....
known to me (or proved to me on the oath of.....)
to be the president (or vice-president) or the secretary (or the assistant
secretary) of the corporation that executed the within instrument (where,
however, the instrument is executed in behalf of the corporation by some
one other than the president, or vice-president, or secretary, or assistant
secretary), insert: known to me (or proved to me on the oath of.....
.....) to be the person who executed the
within instrument on behalf of the corporation therein named, and acknowl-
edged to me that such corporation executed the same.

Sec. 2. All acts or parts of acts in conflict herewith are hereby repealed.

Sec. 3. This act shall be in full force and effect from and after its
passage and approval.

Approved March 18, 1937.

As amended by chapter 169, Laws of 1937.

CHAPTER 83

**POWER OF WATER USERS' ASSOCIATIONS ORGANIZED
UNDER FEDERAL LAW**

7160. Power to levy new assessments. Whenever any water users' association, having a contract with the United States government for construction of works and delivery of water, and also a contract with its shareholders, organized under and by virtue of the corporation laws of this state, and in conformity with the laws of the United States, shall have levied an assessment or assessments upon its capital stock, which assessment or assessments, or any part thereof, remain uncollected, such association shall have the power to discharge all assessments theretofore levied, and to levy in lieu thereof an assessment which shall include all previous assessments levied upon the shareholders of said association, and to give credit for all payments on assessments theretofore made.

7161. Assessments to be equitable. All assessments authorized hereunder shall be equitable and be based upon benefits received or available.

7162. Transfer of shares of stock of water users' associations. Shares of stock of water users' associations, organized in conformity with the requirements of the laws of the United States and the state of Montana, and

under the reclamation act of June 17, 1902, and which shares of stock, by the articles of incorporation of said association, are inseparably appurtenant to the lands for which they are subscribed, shall, upon the presentation of proof to such association of the transfer of any of said land, be transferred on the books of said association, by the proper officers of the association, to the grantee or successor in title to said land.

7163. Assessment of shares of stock. The assessable stock of any such water users' association, heretofore mentioned, may at the time of any assessment made, after the major portion of such irrigation project is completed and the irrigable area thereunder determined, be one share for each irrigable acre, and appropriate by-laws of the association may provide for the discharge of assessments levied on stock appurtenant to lands then determined to be non-irrigable.

7164. Division of irrigation project into districts and election of directors. Such water users' association shall be permitted to divide the area under such irrigation project into as many districts as there are directors provided for in its articles of incorporation, and each district shall elect one director for a term not to exceed five years; provided, however, that at the first election held to elect directors under the provisions of this act, each district shall elect one director, who shall hold office for such a term of years as the by-laws shall provide, and thereafter a director shall be elected in the district and at the annual election held just prior to the expiration of the term of office of the director of that district.

7165. Vacancies in board of directors. In case of a vacancy in the board of directors from any cause, the board shall fill such vacancy by appointment to hold to the end of that fiscal year, and a director shall be elected at the annual election in the district where such vacancy occurs to fill the unexpired term of such vacancy.

CHAPTER 94

COOPERATIVE GRAZING DISTRICT ASSOCIATIONS

7364.7. Grazing districts—articles of incorporation—form. Whenever three or more qualified persons shall desire to incorporate a cooperative grazing district having for its object the utilization, conservation, restoration and improvement of forage resources on their lands or upon lands to be acquired by such association by purchase or lease, they shall prepare and file articles of incorporation to that effect in the office of the secretary of state in the manner in this act specified. Such articles shall be signed, sealed and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate, and shall include the following:

- (1) The name of the association.
- (2) The purpose for which it is formed.
- (3) The county or counties in which such district is located and the principal office or place of business of the association in the state.

- (4) The membership fee for each member of the association which shall in no case be greater than five dollars (\$5.00).
- (5) The term for which such association is incorporated which shall not exceed forty (40) years.
- (6) The names and residences of the persons who subscribe to and acknowledge such articles of incorporation, together with legal description of the lands owned or leased by each incorporator.
- (7) Names and residences of those who have subscribed for membership, with a description of the lands owned or leased by each.
- (8) The articles of incorporation shall hereafter be in substantially the following form:

ARTICLES OF INCORPORATION

- 1. The name of this association shall be:
“.....Cooperative Grazing Association.”
- 2. This is a cooperative organization without capital stock and is not operated for profit. The purpose for which it is formed is to make possible the acquisition, control, conservation and beneficial use by its members of certain grazing lands lying in.....County orCounties, Montana, to the end that the members of the association may stabilize their farming and ranching operations.
- 3. The.....Cooperative Grazing District shall be situated wholly within the boundaries of.....County, within the boundaries of.....Counties, Montana, and the office of the association shall be located in.....County, Montana.
- 4. The membership fee of this association shall be Five Dollars (\$5.00) per member.
- 5. This association shall have a corporate life of forty (40) years.
- 6. The individuals who subscribe to membership and acknowledge these articles of incorporation, together with their respective residences and the legal description of their lands, is as follows:

Name	Address	Description of Land (Either Owned or Leased)
.....
.....
.....

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals this.....day of, 19.....

Signed, Sealed and Delivered in
the Presence of

.....
.....
.....

County of..... }
 STATE OF MONTANA } ss.

On this.....day of....., 19....., before me,
a Notary Public for the State of Montana,
 personally appearedand.....
 known to me personally to be the persons whose names are subscribed to
 the within instrument, and acknowledged to me that they executed the
 same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
 my official seal the day and year in this certificate first above written.

.....
 Notary Public for the State of Montana

My Commission expires.....

Residing at

7364.8. Powers. Each association organized under this act shall have
 the following powers:

(1) To lease or acquire, by purchase or otherwise, lands for grazing
 purposes or for raising forage crops and to dispose of such lands by trade,
 sale or otherwise.

(2) To construct or acquire fences, reservoirs, or other facilities for
 the care of livestock.

(3) To lease from the county or counties in which the cooperative
 grazing district is located, land acquired by such county or counties through
 tax sale or otherwise, which is located in or contiguous thereto and not
 already under lease.

(4) To apportion to members grazing rights within such district on
 such terms, conditions and limitations as may be specified by the direc-
 tors thereof, or in accordance with the terms and limitations imposed for
 the purpose of conservation, restoration and improvement of forage re-
 sources in the leasing of county, state or Federal land.

(5) To issue or cause to be issued permits to graze livestock on such
 grazing districts to association members, bona fide residents, lessees of
 lands, and other stock owners, having, in each case commensurate lands,
 pursuant to the by-laws and rules and regulations of the association, ap-
 proved by the Montana grazing commission. Such permittees shall be
 entitled to participate in the use of the range upon the payment, annually,
 of reasonable fees in each case to be fixed or determined from time to time
 by the directors of the association, provided that grazing permits shall be
 issued only to residents of the state of Montana and to individuals, asso-
 ciations or corporations authorized to conduct business under the laws of
 the state of Montana and actually engaged in the raising of livestock.
 Preference shall be given in the issuance of grazing permits to those within
 or near a district who are members of the association or land owners or
 lessees engaged in the livestock business within or near said grazing dis-
 trict. The commensurability of such members or applicants shall be the
 basis of issuing permits for the proper use of lands owned, occupied or
 leased by them. Such permits shall be for a period of not more than ten
 (10) years, subject to the preference right of the permittee to renewal.

7364.9. Members, qualifications—effect of disposing of land. Any person, partnership, association, corporation or legally authorized agent of either thereof owning or leasing forage producing land within or near the proposed boundaries of any cooperative grazing district set up by any association incorporated under this act, shall be entitled to become a member of such association by paying the membership fee and by subscribing to the by-laws and by complying with the regulations fixed by the grazing district as approved by the Montana grazing commission. When any member shall dispose of the lands owned or leased by him within or near the cooperative grazing district so that he is no longer the owner of such lands or leases commensurate with his permit, then such person shall cease to be a member of such association and his rights and interests in the association shall thereupon pass to the purchaser thereof. When any member shall dispose of a part of the lands or leases owned by him so that another shall become the owner of such lands or leases and acquire right to membership, then the rights and interests involved shall be determined by the board of directors of the association based upon the commensurability of the lands or leases in such new relationship.

7364.10. By-laws. Each association incorporated under this act shall within thirty (30) days after its incorporation adopt a code of by-laws by a majority vote of its members for its government and management, not inconsistent with the powers granted under this act, and before such code of by-laws becomes effective it must be submitted to and be approved by the Montana grazing commission, in order that so far as possible there may be uniformity in the regulations and by-laws of all cooperative grazing associations now existing or hereafter formed under the laws of the state.

Each association incorporated under the provisions of Chapter 66 of the session laws of the twenty-third legislative assembly of the state of Montana, 1933, shall within thirty (30) days after the passage and approval of this act, by a majority vote of its members, amend its existing by-laws so far as may be necessary to conform with the provisions of this act, not inconsistent with the powers granted under this act, which said amended by-laws shall, before becoming effective, be submitted to and be approved by the Montana grazing commission. Such by-laws shall provide for:

(1) The time, place and manner of calling and noticing meetings of the association and of its board of directors.

(2) The number of members constituting a quorum at any meetings.

(3) The number of directors of the association, their tenure of office, and the time and manner of their election; the officers of the corporation, their tenure of office, the manner of their election and their duties.

(4) Suspensions of rights, loss of privileges and grazing permits for violation of such by-laws, or of any regulation, limitation or restriction imposed for the conservation of forage within the district.

(5) The manner of filling vacancies in the board of directors or of any office.

7364.11. Directors, powers and duties.

(1) The directors shall possess the full corporate power of the association as authorized in this act.

(2) The directors shall make regulations for the management and control of the affairs of the association and of the manner of utilization of grazing and range development within their respective districts. Such regulations before becoming effective, shall be submitted to and be approved by the Montana grazing commission.

(3) The directors shall apportion grazing rights within their districts to members on a commensurate basis as may be defined by the by-laws and regulations of the association.

(4) To grant to non-members grazing permits within such districts when the amount of forage within the district is greater than the need of the members.

(5) To determine grazing fees to be imposed on members or non-members on a per-head basis for grazing rights or to determine assessments on members on a per-head grazing basis for the purchase of lands situated within, contiguous to or adjacent to such districts.

(6) On behalf of the association, to enter into leases with persons, corporations, partnerships or with the county or counties in which the district is located or with the state or the federal government for tracts of land within, contiguous to or adjacent to such districts.

(7) To specify the breed, quality and number of male breeding animals which each member must furnish when stock are grazed in a common pasture within the grazing district.

7364.12. Filing map of district. Cooperative grazing associations organized under this act shall, upon completion of organization and incorporation, file with the county clerk of the county or counties in which such lands lie, a map or plat of the grazing district proposed to be created. If such district shall contain land situated in more than one county, then a map or plat of such grazing district shall be filed with the county clerk of each county in which such lands lie. Whenever any incorporated grazing association shall enlarge or reduce the area included within its district, or change or modify its boundaries, it shall file with the county clerk or clerks, a map or plat to indicate such changed boundaries.

7364.13. Leasing and/or purchasing of lands. Any incorporated grazing association may purchase or lease any and all lands owned by the United States, the state of Montana, any county, corporation or individual on such terms as may be lawfully negotiated in each case.

In negotiating the terms of any lease with a cooperative grazing district, county commissioners may provide for a variable scale of rental charges, based on market prices for livestock and/or livestock products, or on the number and character of stock to be grazed in said district.

7364.14. Reserves. The association, after paying all costs, lease rentals, or other expenses, may set up such reserve for contingencies as in its judgment is advisable.

7364.15. Distribution of interests upon dissolution. Whenever any cooperative grazing district is dissolved by act of its board of directors or otherwise, in accordance with the general law relative to dissolution of

corporations, then the rights and interests therein shall be distributed among the members in proportion to the amounts paid in by the various members as assessments, as nearly as the board of directors may determine.

7364.16. Amendments of by-laws. By-laws may be altered or amended at any meeting of the members, legally called, and noticed, by a two-thirds vote of the members present, but such by-laws so altered or amended must before becoming effective be submitted to and be approved by the Montana grazing commission.

7364.17. Appeals. In the event of dispute between a member of an association and the association itself, or between two or more associations, appeal may be made to the Montana grazing commission, as in this act provided. The record in the case may be prepared pursuant to stipulation of the parties, or, if they fail to agree thereon, the record may be settled by the Montana grazing commission.

7364.18. Appeal to courts. The action of the Montana grazing commission in such appeals shall be final, save and except that an interested party may seek review of the action of the Montana grazing commission in a district court of the county where the dispute or controversy arose within thirty (30) days after such decision of the Montana grazing commission, and trial of the issue in such court may be had on the record made before the Montana grazing commission or de novo. The district court may affirm, reverse or nullify the decision of the Montana grazing commission. Appeals may be prosecuted from the judgment of the district court to the supreme court of Montana as in other cases.

7364.19. Saving clause. Chapter 66, laws of the twenty-third legislative assembly of the state of Montana, 1933, shall be, and the same is hereby amended, save and except that as to any grazing districts organized under and pursuant to such act, this amendment shall not affect, impair or destroy any of the rights and powers by such association pursuant to the provisions of said chapter 66, and such associations so organized shall continue and be in full force and effect, subject, however, to the terms and conditions of this act.

7364.20. Purpose of act. In order to administer, regulate and improve such grazing districts as are now incorporated, or as may hereafter be incorporated, under the laws of the state of Montana, and to make such rules, regulations and establish proper services and standards therefor, enter into cooperative agreements, to insure full realization of the objects of such grazing districts, establish more uniform by-laws and regulations within and among the said various cooperative grazing associations now existing or which may be hereafter incorporated, and in order to effect full cooperation with the director of grazing under the Taylor grazing act, to work out the economic use of the grazing areas of the state of Montana, to establish uniform rules and regulations for the issuance of grazing permits by cooperative grazing associations to the most commensurate and most dependent members, residents, users, and/or livestock operators within any such areas, such utilization, however, to be so conducted as to maintain maximum, continuous production consistent with such use, to provide when and where necessary, for restoration of said natural forage resources, and

do any and all things necessary to accomplish a sound administration of grazing areas in Montana, this act is adopted.

CHAPTER 107

7523. Seals—how affixed. A corporate or official seal may be affixed to an instrument by the mere impression upon the paper or other material on which such instrument is written.

CHAPTER 183

MORTGAGES OF REAL AND PERSONAL PROPERTY

8273. Recordation of mortgages, deeds of trust and assignments for benefit of creditors required—affidavit of good faith and receipt for copy—notice—indexing and recording. All mortgages, deeds of trust, or assignments for the benefit of creditors, of both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property and must be recorded in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent. The recording of such an instrument shall be notice of the rights of the parties under the same. It shall not be necessary to file any such instrument as a chattel mortgage. Such instruments shall be indexed both in the chattel and real estate mortgage indexes in the offices of the county clerks and recorders where recorded, and a reference made in the chattel mortgage record to the book and page wherein the mortgage is recorded.

8275. Chattel mortgages—interest which may be mortgaged—existing debts preferred—contents—preferred liens. Any interest in personal property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage and to secure advances then in contemplation but to be made in the future. Amounts constituting existing debts or obligations shall have a preference lien as against future advances, and advance made under the terms of the mortgage shall have preference in the order in which said amounts are advanced by the mortgagee to the mortgagor. The total amount of all advances contemplated and to be subject to mortgage protection must be stated in the mortgage and with the original debt shall constitute a preference lien for the life of the mortgage for the maximum amount provided in the mortgage as against all mortgages and other intervening liens subsequent in date to the time of the filing of the mortgage; excepting that the lien for services rendered by a thresherman, as specified in sec-

tion 8366, shall be prior to and have precedence over any mortgage, encumbrance or other lien upon said grain or other crops; also excepting the lien for the seed furnished for the purpose of growing this particular crop, as specified in section 8359, which said seed lien shall have priority over all other liens and encumbrances thereon except the said thresherman's liens and also excepting any other lien given priority by statute. The mortgagee shall upon demand of the mortgagor or a creditor furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances.

8276. Execution—affidavit of good faith—copy of mortgage and receipt. A mortgage of personal property must be signed by the mortgagor, and be acknowledged by the mortgagor before some officer qualified to take acknowledgments, and every such mortgage must have attached thereto the affidavit of the mortgagee, his agent, attorney, or other representative, that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay, or defraud creditors; and where there are two or more mortgagees named in a mortgage, whether copartners or otherwise, any one of said mortgagees may make such affidavit on behalf of all the mortgagees named therein. And every mortgagee must surrender without cost to the mortgagor, at the time of the execution of the mortgage, a correct copy of the original mortgage so signed, with acknowledgments shown thereon. And the mortgagor must surrender to the mortgagee a receipt, which shall be attached to the original mortgage, showing that the mortgagee has surrendered to him a copy of such mortgage, and said receipt must accompany the mortgage when presented to the clerk and recorder and filed therewith. Otherwise said mortgage shall not be filed as a chattel mortgage by the clerk and recorder.

8277. Execution of mortgage by firm of general partners—corporation. Subject to the provisions of the preceding section, one member of a firm of general partners may alone execute a mortgage of personal property on behalf of the firm, to secure all existing indebtedness of the firm, and a mortgage so executed is as valid as though executed and made by all the partners. In case of a corporation, the president, vice-president, secretary, assistant secretary, cashier, or general manager thereof may execute the mortgage, or make the affidavit of good faith aforesaid where the corporation is the mortgagee.

8280. Renewal of mortgages—affidavit. Every mortgage of personal property, executed and filed as provided by the laws of this state, may be renewed at any time within sixty days after the expiration of two years from the date of filing the same, in case such debt or obligation, or any part thereof, be unpaid or unfulfilled, by the filing of an affidavit showing the date of such mortgage, the names of the mortgagor and mortgagee, the date of filing the same, and the amount of the debt justly owing at the date of the making of such affidavit, or the condition of the obligation then unfulfilled, and that such mortgage was neither made nor renewed to hinder, delay, or defraud creditors or subsequent mortgagees of the said mortgagor, which affidavit must be subscribed and sworn to by the mortgagee or his assignee, or other successor in interest; or if more

than one mortgagee, assignee, or successor in interest, such affidavit may be made by one of them on behalf of all. In case of the absence of the mortgagee or his assignee from the county where such mortgage is filed, the affidavit may be made by the agent or attorney or other representative of the mortgagee or his assignee, or of his successor in interest. The affidavit may be made in behalf of the corporation by the president, vice-president, secretary, assistant secretary, cashier, or general manager, and in case no such officer is within the county where the mortgage is filed, then by the agent, attorney, or other representative of such corporation; provided, that nothing shall be so construed as to prevent the mortgagee or his assignee or successor in interest or one of them, where there are more than one, from making such affidavit wherever he may, whether in or out of the county where the mortgage is filed, so long as said affidavit is filed as hereinbefore specified. The affidavit must be filed in the office where the mortgage therein described is filed, and thereupon the county clerk of such county must attach such affidavit to the mortgage therein described, and note the date of filing thereof opposite the entry of the mortgage therein described in the book provided by law for the entry of chattel mortgages, and the original mortgage shall then continue in full force and effect for the period of three years from the date of filing said affidavit.

Code of Civil Procedure

CHAPTER 28

9061. Limitations prescribed in actions against directors, etc. Sections 9011 to 9066 of this code do not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

CHAPTER 31

MANNER OF COMMENCING CIVIL ACTIONS

9111. Summons—how served. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this state, to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

2. If the suit is against a foreign corporation, or a nonresident joint stock company or association, doing business and having a managing or business agent, cashier, or secretary within this state, to such agent, cashier or secretary, or to a person designated as provided in section 6652 of the civil code.

3. If against a minor under the age of fourteen years, residing within this state, to such minor, personally, and also to his father, mother, or guardian; or, if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If against a person residing within this state, who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person, and also to his guardian.

5. If against a county, city or town, to the president or chairman of the board of county commissioners, president of the council or trustees, mayor, or other head of the legislative department thereof.

6. If the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members, and if none such can be found, service may be made upon the secretary of state in the manner prescribed by section 9112 of the Montana Revised Codes.

7. In all other cases to the defendant personally.

As amended by Chapter 175, Laws of 1937.

9112. Service of summons on certain corporations—made on secretary of state. When an action is pending in any court in this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in this state, upon any cause of action arising within this state, and the president or other head, secretary, cashier, or managing agent of such domestic corporation, or the business agent, cashier, secretary, or agent appointed to receive service of process by such corporation organized under the laws of any other state or country, or any clerk, superintendent, general agent, cashier, principal director, ticket agent, station-keeper, managing agent, or other agent, having the management, direction, or control of any property of any corporation doing business in this state, cannot be found, upon which service of process can be made, and an affidavit is filed in the office of the clerk of the court in which the action is pending, setting forth that an action is pending in that court, and that the plaintiff has a good cause of action upon the merits, and that such corporation is a necessary party therein, and that none of the persons or officers above named can be found within the state, upon whom service of process can be made, the clerk of the court shall make an order directing process to be served upon the secretary of state of the state of Montana, or, in his absence from his office, upon the deputy secretary of state of the state of Montana.

9113. When and how service is made—fee for service. When such order is made, the summons and complaint, together with a copy of such order, shall be served upon the secretary of state of the state of Montana, or, in his absence from his office, upon the deputy secretary of state, by delivering to and leaving with him a true copy of the summons and complaint, and a copy of such order, and shall likewise pay to the said secre-

tary a fee of two dollars, which shall be covered into the state treasury by him, and may be taxed as costs by the plaintiff.

9114. Duty of secretary of state. Upon such service being so made upon the secretary of state or his deputy, the said secretary of state or his deputy shall promptly mail the copy of summons and complaint, and copy of the order, by registered mail to the address of such corporation, at its principal home office, as shown by the papers on file in the office of the secretary of state, and shall make out and mail to the clerk of the court in which the action is pending, a certificate of such mailing, which shall have attached thereto the registry receipt for such letter.

9115. Service to be deemed personal. When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, it hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned.

9116. Service of other notices. When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

9117. Publication of summons. When the person on whom the service of a summons is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of the summons; or when the defendant is a foreign corporation, having no managing or business agent, cashier, secretary, or other officer within the state, and an affidavit stating any of these facts is filed with the clerk of the court in which the action is brought, and such affidavit also states that a cause of action exists against the defendant in respect to whom the service of the summons is to be made, and that he or it is a necessary or proper party to the action, the clerk of the court in which the action is commenced shall cause the service of the summons to be made by publication thereof. The provisions of this section shall apply to all actions and proceedings in which personal service of summons is not required to be made in order to obtain relief, including every action or proceeding commenced in any district court of this state to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance, or lien, or cloud, upon the title of real or personal property within this state.

CHAPTER 38

9163. Verification of pleadings. All complaints, answers, and replies must be verified as provided in this section, except that when an admission of the truth of the allegation might subject the party to a prosecution for felony or misdemeanor, or when the action or defense is in behalf of the state, county, or a subdivision thereof, or a municipal corporation, the verification may be omitted. The affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated on information and belief, and that as to

those he believes it to be true. Such verification must be made by the party, or, if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney resides, or is from any other cause unable to verify the pleading, and in such case the verification must state that the deponent is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the matters stated in the pleading are true to the best knowledge, information and belief of such agent or attorney. When a corporation is a party, the verification may be made by any officer thereof, and must state what officer he is, and that the matters stated therein are true to the best knowledge, information, and belief of such officer. If there is no officer of the corporation within the county, the verification may be made by its attorney.

CHAPTER 43

INJUNCTION

9253. Injunction order as to corporation. An injunction order to suspend the general and ordinary business of a corporation must not be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the state is a party to the action.

9254. Injunction against formation of trust. Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person or persons, corporation or corporations, foreign or domestic, for the purpose of enforcing the provisions of section 20 of article XV of the constitution of the state of Montana, or any law or laws enacted pursuant to or for carrying out the same, the court in which such action is pending, if it be a court of record, or if not, then any court of record in this state, shall be and it is hereby authorized to issue an injunction to restrain any such person or persons, corporation or corporations, foreign or domestic, from doing business in this state in violation of said section of the constitution, or in violation of any law or laws enacted pursuant to or for the purpose of enforcing said section of the constitution, pending the final determination of said action so instituted.

9255. Injunction may issue without bond. Said injunction shall issue as in cases of equity, without bond, upon the application of the county attorney of the county in which such action is pending, or upon the application of the attorney-general, in the name of the state of Montana, upon a prima facie showing that an action, civil or criminal, has been so instituted and is so pending, charging such person or persons, corporation or corporations, foreign or domestic, with a violation of said section of the constitution, or of any law or laws enacted thereunder.

CHAPTER 44

ATTACHMENT

9261. Property subject to attachment. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this state of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

9262. Levy of attachment. The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section 9260 be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached by filing with the county clerk a copy of the writ, together with the description of the property attached, and a notice that it is attached.

2. Real property, or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the county clerk a copy of the writ, together with a description of the property, and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached. The county clerk must index such attachment when filed, in the names of both of the defendant and of the person by whom the property is held, or in whose name it stands on the record.

3. Personal property, capable of manual delivery, must be attached by taking it into custody, except in cases in which personal property capable of manual delivery is in the possession of a third person, and such personal property, so in the possession of a third person, may be attached in the same manner as debts or credits and other personal property, not capable of manual delivery, as hereinafter provided.

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

5. Debts or credits and personal property, not capable of manual delivery, and personal property in the possession of a third person, must be attached by leaving with the person owing such debt, or having in his possession or under his control such credits and personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

6. Judgments, standing in favor of and in the name of the defendant upon the records of the clerk of the district court, must be attached by leaving with the said clerk of the district court a copy of the writ, and a notice stating that the said judgment is attached in pursuance of such writ. The clerk of the district court must index and keep a record of all

attachments of judgments thereunder, and such attachment is binding on the judgment creditor.

7. The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that said interest is attached. Such attachment shall not impair the powers of the representative over the property for the purposes of administration. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being administered and the personal representative shall report such attachment to the court when any petition for distribution is filed, and in the decree made upon such petition distribution shall be ordered to such heir, legatee or devisee, but delivery of such property shall be ordered to the officer making the levy subject to the claim of such heir, legatee or devisee, or any prson claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing such interest has become final.

CHAPTER 128

An Act Relating to the Levy of Attachment and Prescribing an Additional Method of Attaching Stocks or Shares of Any Corporation or Company When Its Officers or Agents Do Not Live or Can Not Be Found in Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. In addition to the method prescribed in paragraph 4 of section 9262 of the revised codes of Montana, 1935, for attaching stocks or shares or interest therein of any corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent thereof does not live in Montana or can not be found within the said state and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that the above named officers or managing agent of said corporation does not live or can not be found within the state the clerk of the court shall make an order directing the writ to be served upon the secretary of state of the state of Montana or in his absence from his office, upon the deputy secretary of state of Montana. When such order has been made the said writ of attachment shall be served upon the secretary of state or in his absence upon the deputy secretary of state by leaving with him a copy of said writ and a notice that the stock or interest therein of the defendant is attached in pursuant of such writ.

Sec. 2. Upon such service being so made upon the secretary of state or his deputy the said secretary of state or his deputy shall promptly mail the copy of the writ, notice and copy of said order by registered mail to the address of such corporation at its principal home office as shown by the papers on file in the office of secretary of state and shall make out and mail to the clerk of the court in which the action is pending a certificate of such mailing which shall have attached thereto the registry re-

ceipt for such letter that such attachment so made upon the secretary of state as herein provided shall be effective and the said stock or shares or the interest therein of the defendant shall be attached upon the service of the said writ as herein provided. At the time of the service of said writ there shall be paid to the secretary of state a fee of two (\$2.00) dollars which shall be by him paid into the state treasury and which may be taxed as cost by the plaintiff.

Sec. 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 15, 1937.

CHAPTER 45

RECEIVERS

9301. Appointment of receiver. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property where it appears that the mortgaged property, is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

9302. Notice of application for appointment. Notice of an application for the appointment of a receiver, in an action, before judgment therein, must be given to the adverse party, unless he has failed to appear in the action, and the time limited for his appearance has expired; or unless it shall appear to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court, or lost, materially injured, destroyed, or unlawfully disposed of. The word "property," used in this chapter, includes the rents, profits, or other income, and the increase of real or personal property.

9303. Appointment of receivers upon dissolution of corporations. Upon

the dissolution of any corporation, the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

CHAPTER 59

EXECUTION OF JUDGMENT

9424. What shall be liable on execution—not affected until levy. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment. Gold-dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

9442. Real property sold—how redeemed—who are redemptioners. Property sold subject to redemption, as provided by the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, his wife, or his successor in interest, in the whole or any part of the property, and if the judgment debtor or successor be a corporation, then by a stockholder thereof;

2. A creditor having a lien by judgment, mortgage, or attachment on the property sold, or on some share or part thereof, subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem. The persons mentioned in the second division of this section are, in this chapter, termed “redemptioners.”

9444. Redemptioners’ rights—manner of redeeming—when purchaser entitled to deed—certificate of redemption—redemption by stockholders—redeeming from wife. If property be so redeemed by a redemptioner, another redemptioner may, within sixty (60) days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption, with interest thereon at the rate of one-half of one per cent. ($\frac{1}{2}\%$) per month in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and, in addition, the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner,

within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with interest thereon at the rate of one-half of one per cent ($\frac{1}{2}\%$) per month, and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest. Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk; and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien. If no redemption be made within one year after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor or his wife redeem, he or she must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. If the wife redeem, she shall become the owner of her husband's interest, subject to any liens thereon at the time of the execution sale. Upon a redemption by a debtor, or his wife, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

If a stockholder of a corporation redeems, the corporation, within one (1) year after the date of sale, may redeem by paying to the redemptioner, or the sheriff for his benefit, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent. ($\frac{1}{2}\%$) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon. When a stockholder redeems, any stockholder or stockholders may, at any time after such redemption, and within sixty (60) days after the expiration of one (1) year from the date of sale, contribute to the redemption by paying to the redeeming stockholder, or depositing with the sheriff for his benefit, a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate of one-half of one per cent. ($\frac{1}{2}\%$) per month, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with

like interest thereon, and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed, and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit, setting forth the number of shares of stock owned by him, and to the best of his knowledge, the number of shares of stock of the corporation outstanding. * * * * *

As amended by Chapter 103, Laws of 1937.

CHAPTER 65

QUO WARRANTO

9576. When proceedings may be instituted. A civil action may be brought in the name of the state:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, a public office, civil or military, or a franchise, within this state, or an office in a corporation created by the authority of this state;

2. Against a public officer, civil or military, who does or suffers an act which, by the provisions of law, works a forfeiture of his office;

3. Against an association of persons who act as a corporation within this state without being legally incorporated.

9577. When against a corporation. A like action may be brought against a corporation:

1. When it has offended against a provision of an act for its creation, or renewal, or any act altering or amending such acts;

2. When it has forfeited its privileges and franchises by nonuser;

3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises;

4. When it has misused a franchise or privilege conferred upon it by law, or exercised a franchise or privilege not so conferred.

9578. Who may commence the action. The attorney-general, when directed by the governor, shall commence any such action; and when, upon complaint or otherwise, he has good reason to believe that any case specified in the preceding section can be established by proof, he shall commence an action.

9579. Upon whose relation. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court, or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under the first subdivision of section 9576, he may require security for costs, to be given as in other cases.

9580. When private person may commence action. A person claiming to be entitled to a public office unlawfully held and exercised by another, by himself or by an attorney and counselor-at-law, may bring an action therefor in the name of the state, as provided in this chapter. On filing

the complaint, such person shall enter into an undertaking, with two sufficient sureties, to be approved by the judge or any judge of the court in which the action is brought, conditioned that such person will pay any judgment for costs or damages recovered against him, and all costs and expenses incurred in the prosecution of the action, which undertaking shall be filed with the clerk of the court.

9581. What complaint to contain. When the action is against a person for usurping an office, the complaint shall set forth the name of the person who claims to be entitled thereto, with an averment of his right thereto, and judgment may be rendered upon the right of the defendant, and also upon the right of the person so averred to be entitled, or only upon the right of the defendant, as justice requires.

9582. Who made defendants. All persons who claim to be entitled to the same office or franchise may be made defendants in the same action to try their respective rights to such office or franchise.

9583. Where action brought. An action under this chapter can be brought in the supreme court of the state, or in the district court of the county in which the defendant, or one of the defendants, resides or is found, or, when the defendant is a corporation, in the county in which it is situated, or has a place of business.

9584. Application to file complaint, etc. Upon application for leave to file a complaint, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto, and if leave be granted, an entry thereof shall be made on the minutes of the court, or the fact shall be indorsed by the judge on the complaint, which shall then be filed.

9585. Summons. When the complaint is filed without leave and notice, a summons shall issue, and be served as in other cases.

9586. Service by publication. When a summons is returned not served because the defendant, or its officers or office, cannot be found within the county, the clerk shall publish the summons as in other cases.

9587. Pleadings. The pleadings shall be as in other cases.

9588. Judgment. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the relator recover his costs.

9589. Judgment against directors of corporation. When the action is against a director of a corporation, and the court finds that, at his election, either illegal votes were received, or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to be declared elected at such election.

9590. When court may order new election. In a case named in the last section, the court may order a new election to be held, at a time and place, and by judges, appointed by the court, notice of which election, and naming the judges, shall be given for the time and in the manner provided by law for notice of elections of directors of such corporation; the order of the court shall become obligatory upon the corporation and its officers

when a duly certified copy thereof is served upon its secretary personally, or left at its principal office; and the court may enforce its order by attachment, or in any other manner it deems necessary.

9591. Rights of person adjudged to be entitled to office. If judgment be rendered in favor of the person averred to be entitled to an office, he may, after taking the oath of office, and executing any official bond required by law, take upon him the execution of the office; and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power, appertaining to the office from which he has been ousted.

9592. Action for damages. Such person may, at any time within one year after the date of such judgment, bring an action against the party ousted, and recover the damages he sustained by reason of such usurpation.

9593. Judgment—how enforced. If such defendant refuse or neglect to deliver over any such book or paper pursuant to such demand, he shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding ten thousand dollars, and imprisoned in the jail of the county until he complies with the order of the court, or is otherwise discharged by due course of law.

9594. When corporation has forfeited its right. When, in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, or franchises, or has not used the same during a term of five years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense, or the exercise of such power.

9595. Appointment of trustees, etc. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking, payable to the state, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust, and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

9596. Powers and duties of trustees. The trustees shall forthwith demand all money, property, books, deeds, notes, bills, obligations, and papers of every description, within the custody, power, or control of the officers of the corporation, or either of them belonging to the corporation, or in anywise necessary for the settlement of its affairs, or for the discharge of its debts and liabilities, and they may sue for and recover the demands and property of the corporation, and shall be jointly and severally liable to the creditors and stockholders to the extent of its property and effects which come into their hands.

9597. How trustees placed in possession. An officer of such corpora-

tion who refuses or neglects to deliver over any such money, or other things pursuant to such demand, shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten thousand dollars, and imprisoned in the jail of the proper county until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the trustees for the value of all money, or other things, so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

9598. Judgment for costs. If judgment be rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation, or against the person claiming to be a corporation.

9599. Actions have precedence. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern, shall, on the motion of the attorney-general, or the attorney of the party, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

9600. Actions in supreme court. Actions under this chapter, commenced in the supreme court, shall be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court shall have the same authority to issue summons and other process, and to enter orders and judgments, as the clerk of the district court has in like cases. All pleadings and the conduct of the trial shall be the same as in the district court. If a jury is required to determine an issue of fact, a jury shall be drawn and selected from the jury-boxes of the county in which the seat of government is located, and the clerk of the district court of said county must place such jury-boxes in the custody of the clerk of the supreme court for that purpose.

9601. Effect of appeal. If the action is commenced in the district court, an appeal may be taken from the judgment by either party to the supreme court as in other cases, but if there is judgment of ouster against the defendant, there shall be no stay of execution or proceeding, pending such appeal.

CHAPTER 87

COSTS AND DISBURSEMENTS

9807. Security from non-resident plaintiff. When the plaintiff in an action resides out of this state, or is a foreign corporation, security for the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and pro-

ceedings in the action stayed until such new or additional undertaking is executed and filed.

9808. If security not given, action dismissed. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

CHAPTER 88

9828. Oath in behalf of corporation. In all matters where a corporation is authorized to act as trustee, guardian, executor, administrator, or in any fiduciary capacity, and an oath of office is required, it shall be competent for an officer of such corporation to take the required oath for and on behalf of his corporation, and such corporation shall thereby become amenable to the laws relating to individuals in like matters so far as such laws may be applied to a corporation.

CHAPTER 101

DISSOLUTIONS BY DISTRICT COURT

9922. Corporations—how dissolved. A corporation may be dissolved by the district court of the county where its principal place of business is situated, upon its voluntary application for that purpose.

9923. Application—what to contain. The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members;

2. That all claims and demands against the corporation have been satisfied and discharged.

9924. Application—how signed and verified. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

9925. Filing application and publication of notice. If the court is satisfied that the application is in conformity with this chapter, the judge thereof must order it to be filed with the clerk, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county; and if there are none such, then by advertisements posted up in three of the principal public places in the county.

9926. Objections may be filed. At any time before the expiration of the time of publication, any person may file his objections to the application.

9927. Hearing of applications—directors as trustees of creditors and stockholders—copy of judgment to be filed with secretary of state. After the time of publication has expired, the court or judge may, upon five days' notice to the persons who have filed objections, or without further notice

if no objections have been filed, proceed to hear and determine the application, and if all the statements made therein are shown to be true, must, by judgment, declare the corporation dissolved. The court or judge, in such action, shall ascertain the names of the directors of said corporation then in office, and shall incorporate such names in the judgment of dissolution, and the persons so named shall be the trustees of the creditors and stockholders or members of such dissolved corporation. If in any judgment of dissolution heretofore entered, the court declared who were the trustees, such declaration is conclusive evidence thereof. It shall be the duty of the clerk of such district court to immediately file with the secretary of state a copy of the judgment provided for in this section duly certified by such clerk.

9928. Judgment-roll and appeals. The application, notices, proof of publication, objections (if there be any), and declaration of dissolution constitute the judgment-roll; and from the judgment an appeal may be taken, as from other judgments of the district court.

CHAPTER 102

VOLUNTARY DISSOLUTION BY ACT OF DIRECTORS

9929. Voluntary dissolution of corporations. Any corporation organized under the laws of this state, which has ceased to transact business, and which has no assets, may be dissolved upon a compliance with the provisions of this act.

9930. Directors shall file statement, where—contents of statement. A majority of the directors of such corporation, or, in the event some of the directors are dead, a majority of those living, shall file in the office of the clerk of the district court of the county in which the principal office of such corporation is located, a statement, verified by their oaths, setting forth:

1. That said corporation has ceased to transact business;
2. That said corporation has no assets;
3. That said corporation has no intention of ever again resuming operations.

A copy of said statement, certified by the clerk of said district court, shall be filed in the office of the secretary of state.

9931. Effect of filing statement. Upon the filing of such certified copy of such statement in the office of the secretary of state, such corporation shall thereupon become dissolved, and thereafter the directors shall be relieved from any further liability in connection with such corporation.

9932. Same with reference to foreign corporations. Such a statement, filed with reference to a foreign corporation, whose principal property and operations were in Montana, shall also relieve the directors from any further liability under the laws of this state, as relating to said corporation.

CHAPTER 105

CHANGE OF NAME

9964. Application for change of name—how made. All applications for change of names must be made to the district court of the county

where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, if a male, and under the age of eighteen years, if a female, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if the father of such person be not living, name as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition, apply to the district court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be had as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association.

Penal Code

CHAPTER 6

OFFENSES BY AND AGAINST CANDIDATES FOR NOMINATION AND ELECTION

10790. Contributions from corporations, public utilities, and others. No corporation, and no person, trustee, or trustees owning or holding the majority of the stock of a corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, surety, indemnity, safe deposit, insurance, railroad, street-railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery, or crematory company, or any company having the right to take or condemn land, or to exercise franchises in public ways granted by the state or by any county, city, or town, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person, or in order to aid or promote the interests, success, or defeat of any political party or organization. No person shall solicit or receive such payment or contribution from such corporation or such holders of a majority of such stock.

10815. Corporations—proceedings against, for violation of act. In like manner as prescribed for the contesting of an election, any corporation organized under the laws of or doing business in the state of Montana may be brought into court on the ground of deliberate, serious, and ma-

terial violation of the provisions of this act. The petition shall be filed in the district court in the county where said corporation has its principal office, or where the violation of law is averred to have been committed. The court, upon conviction of such corporation, may impose a fine of not more than ten thousand dollars, or may declare a forfeiture of the charter and franchises of the corporation, if organized under the laws of this state, or if it be a foreign corporation, may enjoin said corporation from further transacting business in this state, or by both such fine and forfeiture, or by both such fine and injunction.

CHAPTER 14

MONOPOLIES—TRUSTS

10901. Unlawful trusts and monopolies—penalty. Every person, corporation, stock company, or association of persons in this state, who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporation, or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce—the phrase “articles of commerce,” as herein employed, shall and does include not only those articles which are generally, popularly, and legally known as articles of commerce, but also gas, water, water power, electric light, and electric power, for whatever purpose used or employed—or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce, or product, intended for sale, use, or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale, or transportation of any such article, or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such articles below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the county jail for a period not less than twenty-four hours or more than one year, or by fine not exceeding twenty-five thousand dollars, or both.

10904. Unfair discrimination in purchase price of commodities. Any person, firm, company, association, or corporation, either domestic or foreign, doing business in the state of Montana, and engaged in the business of buying, selling, producing, manufacturing, or distributing any commodity or product in general use, that shall, for the purpose of creating a monopoly or destroying the business of a regularly established dealer in such commodity or product, or to prevent the competition of any person, firm, company, association, or corporation who in good faith intends or attempts to become such dealer, shall discriminate between different persons, sections, communities, or portion thereof, or parts of the state of Montana, by purchasing any commodity or product in general use at a

higher rate or price in one section, city, or community, or any portion thereof, than such person, firm, company, association, or corporation pays for such commodity or product in another section, city, or community, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution, and for the difference in the grade and quality of such commodity, or product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful.

Proof that any person, firm, company, association, or corporation has paid a higher rate or price for any such commodity or product in one section, city, or community, or any portion thereof, than such person, firm, company, association or corporation paid for such commodity or product in another section, city or community, or portion thereof, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution, and for the difference in the grade and quality of such commodity, or product, shall be prima facie evidence of the violation of this act; provided, however, that the payment of such higher rate or price in one section, city, or community, or any portion thereof, than each person, firm, company, association or corporation pays for such commodity or product in another section, city or community, after making such allowance as above provided, shall not be deemed to be unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such section, city or community, but the burden of proof of such fact shall be upon the person, firm, company, association or corporation charged with unfair discrimination.

10905. Prosecutions by attorney-general. If complaint shall be made to the attorney-general that any corporation is guilty of unfair discrimination, as defined by this act, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state; and if, in such action, the court shall find that such corporation is guilty of unfair discrimination, as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

10906. Penalty for violation of law. Any person, firm, or corporation violating the provisions of section 10904 of this code, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars nor more than ten thousand dollars for each offense.

10907. Act is cumulative. Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

10908. What constitutes unfair competition or discrimination in sale of commodities. Any person, firm, or corporation, foreign or domestic, doing business in the state of Montana, and engaged in the production, manufacture, or distribution of any commodity in general use, that inten-

tionally, for the purpose of destroying the competition of any regularly established dealer in such commodity, or to prevent the competition of any person, firm, or corporation who in good faith intends and attempts to become such dealer, shall discriminate between different sections, communities, or parts of this state, by selling such commodity at a lower rate or price in one section, city, or community, or any portion thereof, than such person, firm, or corporation, foreign or domestic, charges for such commodity in another section, community, or city, after equalizing the distance from the point of production, manufacture, or distribution, and freight rates therefrom, shall be deemed guilty of unfair discrimination.

10909. Prosecutions by attorney-general. If complaint shall be made to the attorney-general that any corporation is guilty of unfair discrimination as defined by this act, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state, and if, in such action, the court shall find that such corporation is guilty of unfair discrimination as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

10910. Penalty for violation of law. Any person, firm, or corporation violating the provisions of section 10908 of this code, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars nor more than ten thousand dollars for each offense.

10911. Act is cumulative. Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

10912. Pooling in purchase, sale, or handling of grain by warehousemen. It shall be unlawful for any person, firm, or corporation engaged in the buying, selling, or handling of grain in any public local warehouse in this state, or for the local agent in charge of such warehouse, or any other agent of the person, firm, or corporation operating the same, to enter into any contract, agreement, combination, or understanding with any other person, firm, or corporation, owning or operating any other public local warehouse at any railway station, its agent or agents, whereby the amount of grain to be received or handled by said warehouses at such station or stations shall be equalized or pooled between said warehouses, or whereby the profits or earnings derived from said warehouses shall be divided or pooled or apportioned in any manner, or whereby the price to be paid for any kind of grain, at such station, shall be fixed or in any manner affected; and each day of the continuance of any such agreement, contract, or understanding shall constitute a separate offense.

10913. Penalty for violation of law—notice to grain inspector. Any person, firm, or corporation, or any agent of any person, firm, or corporation, who shall violate the provisions of this act, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars or more than three hundred dollars, or by imprisonment in the county

jail for not less than thirty days or more than six months, or by both such fine and imprisonment. It shall be the duty of the court before whom a conviction is had to, within ten days after judgment of conviction is rendered, forward a certified copy of said judgment of conviction to the chief grain inspector; and it is hereby made the duty of the chief grain inspector to revoke and annul any license heretofore issued to such person; and in such case no new license shall be granted to the person whose license is revoked, nor to any one either directly or indirectly engaged with him in said business, for a period of one year.

10914. Destruction of food in restraint of trade. It shall be unlawful for any person, firm, or corporation to destroy, or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other stuff, products, or articles which are customary food, or which are proper food for human beings, and are in fit sanitary condition to be used as such.

10915. Penalty for violation of act. Every person or firm or the manager or employee of every corporation violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment.

CHAPTER 80

Laws of 1937

An Act Relating to Unfair Competition and Discrimination, Making Certain Unfair and Discriminatory Practices Unlawful, Defining the Duties of the Attorney General in Regard Thereto, Declaring Certain Contracts Illegal and Forbidding Recovery Thereon, Providing for Actions to Enjoin Unfair Competition and Discrimination and to Recover Damages Therefor, Making the Violation of the Provisions of This Act a Misdemeanor and Providing Penalties and Providing for Its Administration by the Montana Trade Commission.

Be It Enacted by the Legislative Assembly of the State of Montana:

Section 1. It shall be unlawful for any person, firm, or corporation, doing business in the State of Montana and engaged in the production, manufacture, distribution or sale of any commodity, or product, or service or output of a service trade, of general use or consumption, or the product or service of any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, produce or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation, who or which in good faith, intends and attempts to become such dealer, to discriminate between different sections, communities or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing such commodity, product or service at a lower rate in one section, community or city, or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another after making allowance for difference, if any, in the grade or quality, quan-

tity and in the actual cost of transportation from the point of production, if a raw product or commodity, or from the point of manufacture, if a manufactured product or commodity. This act shall not be construed to prohibit the meeting in good faith of a competitive rate, or to prevent a reasonable classification of service by public utilities for the purpose of establishing rates. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act.

Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of Section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

Sec. 2. Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this act, assists or aids, directly or indirectly in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts.

In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.

Sec. 3. It shall be unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state, to sell, offer for sale or advertise for sale any article or product, or service or output of a service trade, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product, or service or output of a service trade for the purpose of injuring competitors and destroying competition, and he or it shall also be guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties set out in Section 11 of this act for any such act.

The term "cost" as applied to production is hereby defined as including the cost of raw materials, labor and all overhead expenses of the producer; and as applied to distribution "cost" shall mean the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus the cost of doing business by said distributor and vendor.

The "cost of doing business" or "overhead expense" is defined as all costs of doing business incurred in the conduct of such business and must include, without limitation the following items of expense: labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising.

Sec. 4. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of said article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said

sale of said article or product replaced through the ordinary channels of trade, unless said article or product is kept separate from goods purchased in the ordinary channels of trade and unless said article or product is advertised and sold as merchandise purchased at a forced, bankrupt, close-out sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

Sec. 5. In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act.

Sec. 5-A. The following method shall be used in determining fair prices for agricultural products sold on local markets, in any trade area, district, or city in which the major portion of any agricultural commodity or product is produced within or adjacent to said trade area, city or district.

Whenever 75% of producers of any agricultural product or commodity marketing said products or commodities within any trade area, district or city shall determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be deemed the fair price for such product or commodity under the terms of this act.

Such producers through their regular constituted agents shall file with the Montana trade commission such fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers and consumers of said agricultural products or commodities. Any organization representing consumers shall not be denied representation at such a meeting.

After the establishment of such a schedule of fair prices for said agricultural products or commodities, it shall be a violation of this act for any producer, jobber, wholesaler or retailer to sell or buy any agricultural commodity or product below such price as established by the Montana trade commission and such action shall be deemed a violation of this act and punishable under the terms provided in this act.

Sec. 6. The provisions of Sections 3, 4 and 5 shall not apply to any sale made:

(a) In closing out in good faith, the owner's stock or any part thereof, for the purpose of discontinuing his trade in any stock or commodity, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article or product, or service or output of a service trade, in the same locality or trade area.

Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be construed to be a vendor within the meaning of this act.

Sec. 7. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice and any person, firm, partnership, corporation, or association resorting to such trade practice shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to the penalties set out in Section 11 of this act.

Provided, however, that nothing in this act shall prevent a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association.

Sec. 8. Upon the third violation of any of the provisions of Sections 1 to 7, inclusive, of this act by any corporation, it shall be the duty of the attorney general to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges and powers exercised by such corporation, and to permanently enjoin it from transacting business in this state. If in such action the court shall find that such corporation is violating or has violated any of the provisions of Sections 1 to 7, inclusive, of this act, it must enjoin said corporation from doing business in this state permanently or for such time as the court shall order, or must annul the charter, or revoke the franchise of such corporation.

Sec. 9. Any contract, express or implied, made by any person, firm or corporation in violation of any of the provisions of Sections 1 to 7, inclusive, of this act, is declared to be an illegal contract and no recovery thereon shall be had.

Sec. 10. Any person, firm, private corporation or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of Sections 1 to 7, inclusive, of this act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of Sections 1 to 7, inclusive, of this act, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

Any defendant in an action brought under the provisions of this section may be required to testify under the provisions of the code of civil procedure of this state, in addition the books and records of any such defendant, may be brought into court and introduced, by reference, into evidence; provided, however, that no information so obtained may be used against

the defendant as a basis for a misdemeanor prosecution under the provisions of Sections 1 to 7, inclusive, and 11 of this act.

Sec. 11. Any person, firm or corporation, whether as principal, agent, officer or director, for himself, or itself, or for another person, or for any firm or corporation, or any corporation, who or which shall violate any of the provisions of Sections 1 to 7, inclusive, of this act, is guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000.00), or by imprisonment not exceeding six months or by both said fine and imprisonment, in the discretion of the court.

Sec. 12. The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law.

Sec. 13. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional.

Sec. 14. The legislature declares that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be literally construed that its beneficial purposes may be subserved.

Sec. 15. This act shall be known and designated as the "Unfair Practices Act".

Sec. 16. This act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall therefore go into immediate effect. The facts constituting the necessity are as follows:

The sale at less than cost of goods obtained at forced, bankrupted, close out, and other sales outside of the ordinary channels of trade is destroying healthy competition. If such practices are not immediately stopped, many more businesses will be forced into bankruptcy. In order to prevent such occurrences, it is necessary that this act go into effect immediately.

Sec. 17. This act shall be in full force and effect from and after its passage and approval.

Approved March 3, 1937.

CHAPTER 144

Laws of 1937

An Act to Prevent Unfair Competition and to Prohibit Monopolies in the Business of Financing the Sale of Motor Vehicles in This State, by Declaring Unlawful and Void Certain Agreements, Contracts or Conditions Between Manufacturers or Wholesale Distributors, Whereby the Dealer Is Required to Finance Sales of Motor Vehicles Only Through

a Designated Finance Company or Finance Agency; and Providing Penalties and Recoveries for the Violation of This Act.

Be It Enacted by the Legislative Assembly of the State of Montana:

Section 1. It is hereby declared to be the policy of this state that free and unrestrained competition shall prevail in the business of financing the purchase or sale of motor vehicles.

Sec. 2. (a) The term "person" as used in this act means any individual, firm, corporation, partnership, association, trustee, receiver, or assignee for the benefit of creditors.

(b) The terms "sell," "sold," "buy," and "purchase" as used in this act, include exchange, barter, gift, and offer or contract to sell or buy.

(c) The term "manufacturer" shall mean any person, firm, corporation, partnership, or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.

(d) The term "wholesale distributor" shall mean any person, firm, association, corporation or other organization engaged directly or indirectly in the sale or distribution of motor vehicles to agents or to dealers.

(e) The term "dealer" shall mean any person, firm, association or corporation or other organization of any kind, character or nature regularly engaged or intending to engage in the business of selling motor vehicles at retail within this state.

(f) "Finance company" or "finance agency" shall mean any person, firm, association, corporation or other organization engaged in the business of buying, selling, assigning, dealing, financing or acquiring conditional contracts of sale or engaged in the business of purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either secured by vendor's lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor vehicles in this state.

(g) The term "motor vehicle" shall mean every self-propelled vehicle moving over the highways of this state, whether patented or unpatented.

Sec. 3. It shall be unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or enter into a contract for the sale of motor vehicles to any motor vehicle dealer on the condition or under an agreement, expressed or implied, that such dealer shall finance the purchase or sale of any motor vehicle or vehicles only through a designated finance company or finance agency. Any such condition, agreement or understanding is hereby declared to be against the public policy of the state and such condition, agreement or understanding shall be unlawful, void, and unenforceable, either as law or equity.

Sec. 4. Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer, or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer, that such manufacturer will cease to sell, or will terminate or refuse to enter into a contract to sell motor vehicles to such dealer unless such dealer finances the purchase or sale of any such motor vehicle or vehicles only with or through a designated person, shall be presumed to be made at the direction of and with the authority of such manufacturer and shall be prima facie evidence of

the fact that such manufacturer has sold or intends to sell such motor vehicle or vehicles on the condition or under the agreement prohibited by the provisions of this act.

Section 5. Any person who shall violate any of the provisions of this act, and any employee, agent, or officer of any such person who shall participate, in any manner, in making, enforcing or performing, or in aiding or abetting in the performance of any such contract, condition, agreement or understanding shall be deemed guilty of a crime and, upon conviction thereof, shall be punished for each offense by a fine of not more than five thousand dollars (\$5,000.00) or by imprisonment in the penitentiary for not more than five years or in the county jail for not more than one year, or by both such fine and imprisonment.

Sec. 6. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and recover twofold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

Sec. 7. If any section, sub-section, sentence, clause, or phrase of this act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Approved March 16, 1937.

CHAPTER 35

MISCELLANEOUS INJURIES TO PERSONS

11223. Prohibiting compulsory company boarding-houses. It shall be unlawful for any person, firm, company, or corporation now operating or who shall hereafter operate a boarding-house in connection with their general business, either directly or through others, to compel an employee to board in such boarding-house against his will.

11402. Requiring release of liability, etc. Every person, company or corporation, which requires of its servants or employees, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation is released or discharged from liability or responsibility on account of personal injuries received by such servants or employees, while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

11408. False statement respecting financial condition. Any person who, either individually or in a representative capacity—

1. Shall knowingly make a false statement in writing to any person, firm or corporation engaged in banking or other business respecting his own financial condition or the financial condition of any firm or corporation with which he is connected as member, director, officer, employee or agent, for the purpose of procuring a loan, or credit in any form or an extension of credit from the person, firm or corporation to whom such false statement is made, either for his own use or for the use of the firm or corporation with which he is connected as aforesaid; or,

2. Having previously made, or having knowledge that another has previously made, a statement in writing to any person, firm or corporation engaged in banking or other business respecting his own financial condition or the financial condition of any firm or corporation with which he is connected as aforesaid, shall afterwards procure on faith of such statement from the person, firm or corporation to whom such previous statement has been made, either for his own use, or for the use of the firm or corporation with which he is so connected, a loan or credit in any form, or an extension of credit, knowing at the time of such procuring, that such previously made statement is in any material particular false, with respect to the present financial conditions of himself or of the firm or corporation with which he is so connected; or,

3. Shall deliver to any notebroker or other agent for the sale or negotiation of commercial paper any statement in writing, knowing the same to be false, respecting his own financial condition or the financial condition of any firm or corporation with which he is connected as aforesaid, for the purpose of having such statement used in the furtherance of the sale, pledge or negotiating of any note, bill, or other instrument, for the payment of money made, or endorsed or accepted, or owned in whole or in part, by him individually or by the firm or corporation with which he is so connected; or,

4. Having previously delivered, or having knowledge that another has previously delivered to any notebroker or other agent for the sale or negotiation of commercial paper, a statement in writing respecting his own financial condition, or the financial condition of any firm or corporation with which he is connected as aforesaid, shall afterwards deliver to such notebroker or other agent for the purpose of sale, pledge or negotiation on faith of such statement, any note, bill or other instrument for the payment of money made, or endorsed, or accepted, or owned in whole or in part, by himself individually or by the firm or corporation with which he is so connected, knowing at the time that such previously delivered statement is in any material particular false as to the present financial condition of himself or such firm or corporation, is punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both.

CHAPTER 49

FRAUDS IN THE MANAGEMENT OF CORPORATIONS

11436. Fraud in publishing false statement of concern. Any person who knowingly makes or publishes any book, prospectus, notice, report, statement, exhibit or other publication of or concerning the affairs, financial condition or property of any corporation, joint stock association, co-partnership or individual, which said book, prospectus, notice, report, statement, exhibit or other publication shall contain any material statement which is wilfully and knowingly false so as to give a less or greater apparent value to the shares, bonds or property of said corporation, joint stock association, co-partnership or individual, or any part of said shares, bonds or property, than said shares, bonds or property, or any part thereof, shall really and in fact possess, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned for not more than ten years, or fined not more than ten thousand dollars, or shall suffer both said fine and imprisonment.

11437. Frauds in subscriptions for stock of corporations. Every person who signs the name of a fictitious person to any subscription for, or an agreement to take, stock in any corporation, existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced is guilty of a misdemeanor.

11438. Fraudulent issue of stock, scrip, etc. Every officer, agent or other person in the service of any joint stock company or corporation formed or existing under the laws of this state, or of the United States, or of any state or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud, either:

1. Sells, pledges or issues, or causes to be sold, pledged, or issued, signs or executes, or causes to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which said company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise, upon its power to create or issue stock or evidence of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer, or ownership of any such share or shares, is punishable by imprisonment in the state prison not exceeding seven years, or by a fine not exceeding three thousand dollars, or both.

11439. Frauds in procuring organization, etc., of corporation. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation,

who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years.

11440. Unauthorized use of name in prospectus, etc. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

11441. Misconduct of directors of stock corporations. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either:

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payments; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such corporation, is guilty of a misdemeanor.

11445. Frauds in keeping accounts in books of corporation. Every officer, director or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or to direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes, or concurs in making any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprison-

ment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both imprisonment and fine.

11446. Officer of corporation publishing false reports. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony.

11447. Officer of corporation to permit an inspection. Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder, or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

11450. Director of a corporation presumed to have knowledge of its affairs. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

11451. Director present at meeting, when presumed to have assented to proceedings. Every director of a corporation or joint-stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

11452. Director absent from meeting, when presumed to have assented to proceedings. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein if the facts constituting such violation appear on the records or proceedings of the board of directors and he remains a director of the same company for six months thereafter and does not within that time cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

11453. Foreign corporations. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another state, government or country, if it was one carrying on business or keeping an office therefor within this state.

11454. Same. Every foreign corporation doing business in this state contrary to the provisions of sections 6651 to 6658, of the Civil Code, is guilty of a misdemeanor.

11455. Agent of foreign corporation. Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

11456. Corporation not complying with laws. Every corporation which

fails to comply with the provisions of law relating to corporations, as prescribed in the Civil Code, is guilty of a misdemeanor.

11457. Agent of corporation. Every person who acts as an officer, agent or in any other capacity for a corporation which has not complied with the provisions of law, as prescribed in the Civil Code, is guilty of a misdemeanor.

11458. Director defined. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

11458.1. Mining and oil companies—fraudulent handling of finances. For the purposes of this act, the following acts and offenses relative to the handling of the finances of mine and oil operations within the state of Montana shall be deemed fraudulent:

(a) Failure to expend at least seventy-five per centum (75%) of all money raised from the sale of stock or securities of any other kind or character, from the public in the actual operation and development of the oil and mining property, or in the construction of treating plants, or bona fide payments on the purchase price of state property.

(b) Failure to apply net earnings from said operations, after deducting only reasonable and legitimate expenses, to either a reserve fund, distribution of dividends, liquidation of bona fide indebtedness or reasonable development of said properties.

(c) The operation of holding companies in such a manner as to deprive the stockholders of the parent company of an equitable interest in the earnings of the parent company.

11458.2. Application of act. The provisions of this act shall apply to any person, corporation or other form of association now operating, or which shall hereafter operate a mining or oil enterprise, the finances of which are derived in whole or in part from subscription and security sales from the public, and operating within the state of Montana. Provided that the provisions of this act shall not apply to any person, firm, corporation or cooperative association holding a permit in good standing from the state investment department, or securities listed on the New York Stock Exchange, Boston Stock Exchange, the Board of Trade of the City of Chicago, the Chicago Stock Exchange or the New York Curb Exchange.

11458.3. Investigation of complaints. Any stockholder or creditor of a mining or oil company as heretofore provided in this act who has bona fide reason to believe that the provisions of this act have been violated may complain relative thereto to the attorney general of the state of Montana, the county attorney of the county in which the property is located, or the state investment commissioner, and it shall be incumbent upon the officers heretofore mentioned to make a complete investigation of the records and affairs of said corporation or corporations, and in the event that the facts disclose the violation of the provisions of this act it shall be the duty of the officer to prefer charges against the officers and directors of the corporation or corporations involved.

11458.4. Penalty for violations. Any person or the officers or directors of any corporation, cooperative association or any other association

of any kind or character found guilty of the violation of the provisions of this act shall be subject to imprisonment in the state prison for a term of not less than ninety (90) days or more than three (3) years or by a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000.00) or both such fine and imprisonment.

CHAPTER 80

11985. Proof of corporation by reputation. If upon a trial or proceeding in a criminal case, the existence, constitution, or powers of any corporation shall become material, or be in any way drawn in question, it is not necessary to produce a certified copy of the articles or act of incorporation, but the same may be proved by general reputation, or by the printed statutes of the state, or government or country by which such corporation was created.

CHAPTER 102

PROCEEDINGS AGAINST CORPORATIONS

12230. Summons upon information against corporation. Upon a complaint against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

12231. Form of summons. The summons must be substantially in the following form:

“County of (as case may be).

“The State of Montana to the (naming the corporation):

“You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the complaint of A B for (designating the offense generally).

“Dated at the city (or township) of....., this.....day of....., nineteen.....

“G H, Justice of the Peace (or as the case may be).”

12232. When and how served. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

12233. Examination of the charge. At the appointed time in the summons the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

12234. Certificate of magistrate and return. After hearing the proofs, the magistrate must certify upon the complaint, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the complaint and certificate, as prescribed in section 11796.

12235. County attorney to file information. If the magistrate returns

a certificate that there is sufficient cause to believe the corporation guilty of the offense charged the county attorney may file an information thereof, as in case of a natural person held to answer, or he may file such information by leave of the court.

12236. Appearance and plea. If an indictment is found, or information is filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

12237. Fine on conviction, how collected. When a fine is imposed upon a corporation on conviction it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

12238. Summons to corporation. When an indictment is found or an information filed against a corporation, the clerk must issue a summons in its corporate name, commanding it to appear and answer the indictment or information, a copy of which summons must be served on an officer of said corporation, or upon its agent or attorney designated as the person upon whom service of summons in civil actions may be made, if there be any such in the county where the indictment is found or information is filed; and if there be no officer or designated agent or attorney in the county where the indictment or information is found or filed, then upon any managing agent, ticket agent, clerk, cashier, or secretary, freight agent, superintendent, or general business manager in the county; and if there be none of the above described persons in the county, then upon any of such persons in any county in the state. Such notice must be served at least five days before the time at which the said corporation is by summons required to appear.

12239. Service of summons. When the sheriff or other officer returns the summons, certifying the service thereof, the corporation must, on and after the day appointed in such summons for its appearance, be considered in default, and the court must order the clerk to enter appearance for the corporation, and enter the plea of not guilty in the records of the court, and further proceedings may be had thereon as if the corporation had appeared and pleaded not guilty thereto; and if the corporation is convicted, the court must enter judgment for the amount of the fine and costs which may be awarded against it, in the same manner as on judgment in civil action.

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